

V. 3027

No. 15503

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**United States**  
**Court of Appeals**  
for the Ninth Circuit

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ESTATE OF GRACE N. WILLIAMS, Deceased;  
RALPH E. WILLIAMS, Executor,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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**Transcript of Record**

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**Petition to Review a Decision of the Tax Court  
of the United States**

**FILED**

MAY 27 1957

PAUL P. O'BRIEN, CLERK



No. 15503

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Court of Appeals  
for the Ninth Circuit

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## APPEARANCES

JOHN L. FLYNN,  
U. S. Nat'l Bank Bldg.,  
Portland 4, Oregon,  
For the Petitioner.

CHARLES K. RICE, ESQ.,  
Asst. Attorney General;

ELLIS N. SLACK,  
Atty., Tax Division,  
Dept. of Justice,  
Washington 25, D. C.,  
For the Respondent.



Tax Court of the United States

Docket No. 57441

ESTATE OF GRACE N. WILLIAMS (Deceased),  
RALPH E. WILLIAMS, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

10/1/56, assigned to Judge LeMire, recalled to duty.

DOCKET ENTRIES

1955

Apr. 18—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 19—Copy of Petition served on General Counsel.

Apr. 18—Request for Circuit hearing in Portland, Oregon, filed by taxpayer. 4/21/55, granted.

June 2—Answer filed by General Counsel.

June 8—Copy of Answer served on taxpayer, Portland.

1956

Feb. 17—Hearing set April 30, 1956, Portland, Oregon.

May 4—Hearing had before Judge LeMire on the merits. Stipulation of Facts filed at hearing. Petitioner's Brief, 6/18/56; Respondent's Brief, 7/18/56; Petitioner's Reply Brief, 8/7/56.

1956

- May 29—Transcript of Hearing 4/30/56, 5/4/56, filed.
- June 15—Motion for extension of 15 days to file Brief filed by Petitioner. 6/18/56, granted.
- July 5—Brief filed by Petitioner. 7/5/56, served.
- Aug. 2—Brief filed by Respondent. Copy served 8/3/56.
- Aug. 16—Petitioner's Brief in Reply filed. 8/17/56, served.
- Oct. 29—Memorandum Findings of Fact and Opinion filed. LeMire, J. Decision will be entered under Rule 50. Served 10/29/56.
- Dec. 11—Agreed computation filed.
- Dec. 12—Decision entered, Judge LeMire. Served 12/13/56.

1957

- Mar. 7—Bond in the amount of \$21,500.00 approved and ordered filed.
- Mar. 7—Petition for review with Affidavit of Service of Notice of Filing Petition for Review and Designation filed, by Petitioner. (Ninth Circuit.)
- Mar. 7—Designation of Contents of Record on Review filed by Petitioner.
- Mar. 14—Designation of Additional Portions of Record on Review filed by General Counsel. Statement of Service thereon.



The Tax Court of the United States

Docket No. 57441

ESTATE OF GRACE N. WILLIAMS (Deceased),  
RALPH E. WILLIAMS, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Symbol A:R:90D:ENH) dated February 3, 1955, and as a basis of its proceeding alleges as follows:

1. The petitioner is the duly qualified and acting executor of the Estate of Grace N. Williams, deceased August 20, 1954, under letters testamentary issued by the Circuit Court of the State of Oregon for the County of Multnomah, Department of Probate, on September 29, 1954; a certified copy of the said letters testamentary is attached to this petition as Exhibit "A." The address of the petitioner herein, Ralph E. Williams, Executor of the Estate of Grace N. Williams (deceased), is at 1985 Southwest Sixth Avenue, in the City of Portland, State of Oregon.

2. The notice of deficiency dated February 3, 1955 (a copy of which is attached to this petition and marked Exhibit B), was mailed to the petitioner on or after February 3, 1955.

3. The deficiencies and over-assessments as determined by the Commissioner are in income taxes for the calendar years 1950, 1951, 1952, and 1953, in the net amount of \$15,118.48, and are more specifically set out below:

Calendar year 1950, over-assessment	\$ (21.30)
Calendar year 1951, deficiency . . . . .	2,806.69
Calendar year 1952, deficiency . . . . .	13,060.19
Calendar year 1953, over-assessment	(727.10)

The deficiencies and the over-assessments of income taxes in controversy are listed below:

Calendar year 1951, deficiency . . . . .	\$ 2,806.69
Calendar year 1952, deficiency . . . . .	13,060.19
Calendar year 1953, over-assessment	(727.10)

4. The determination of income tax deficiencies and over-assessments set forth in said notice of deficiency are based upon the following errors:

(a) The determination that the short term capital loss in the amount of \$1,370.90 sustained on a debt due from Ben Hilton, a former partner of the petitioner, was not allowable as a deduction from income of the year 1951 as claimed by the petitioner, or in the alternative that such loss represented a loss sustained by the petitioner by reason

of petitioner's being unable to collect or to realize the cost basis of assets distributed to her in liquidation of a partnership.

(b) The determination that the fair market value of a growing crop received by the petitioner upon distribution in liquidation of Eola Hop Farms, a corporation, during the year 1952, was \$4,375.40 and not \$45,412.97 as claimed by the petitioner.

(c) The determination that the fair market value of buildings and equipment received by the petitioner upon distribution in liquidation of the assets of Eola Hop Farms, a corporation, during the year 1952, was \$18,937.04 instead of \$25,870.92 as claimed by the petitioner.

(d) The failure of the Commissioner to recognize that the petitioner's cost basis for the determination of gain or loss on liquidation during the year 1952 of the petitioner's investment in the capital stock of Eola Hop Farms, a corporation, was \$71,978.60 and the determination by him that the cost basis of the petitioner's investment was \$65,-978.60 for the purpose of such determination.

(e) The determination that the petitioner sustained a long-term capital loss upon liquidation of the Eola Hop Farms during the year 1952 in the amount of \$51,429.05.

(f) The determination that depreciation claimed by the taxpayer as sustained in the growing of hops for sale as a sole proprietorship during the period

from August 1 to December 31, 1952, was excessive in the amount of \$2,348.33.

(g) The determination that the petitioner did not sustain a loss in the amount of \$43,385.90 from the growing, harvesting, and sale of hops as a proprietorship during the year 1952, as claimed by the petitioner.

(h) The failure of the Commissioner to allow to the petitioner a deduction from income of the year 1951 of that portion of an operating loss sustained from the growing, harvesting, and sale of hops during 1952, not offset by the petitioner's income from other sources during the year 1952.

(i) The determination that the petitioner was not entitled to the deduction from income of the year 1953 for the depreciated value of physical properties scrapped during the year 1953, and that the said physical properties were without value except for scrap at July 31, 1952.

(j) The failure of the Commissioner to allow the petitioner a capital loss carry-over for the year 1953 represented by that portion of the adjusted cost basis of the petitioner's investment in the capital stock of Eola Farms, a corporation, not recovered upon liquidation of the corporation and not previously deducted from income.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows; they are based upon the information and belief of petitioner.

(a) The petitioner filed timely federal income tax returns for the years 1950, 1951, 1952, and 1953 with the Director of Internal Revenue, Portland, Oregon, reporting net income thereon in the amounts listed below:

1950 .....	\$36,241.51
1951 .....	30,344.40
1952 Loss .....	(8,731.03)
1953 .....	9,094.27

(b) The petitioner filed a tentative carry-back adjustment of an operating loss from the calendar year 1952 to the calendar year 1951 and received refund of federal income taxes paid in the amount of \$2,121.24, which sum is included with the Commissioner's determination of deficiency for the calendar year 1951.

(c) That during the year 1948, the petitioner was a co-partner with Harry L. Hart and Ben Hilton engaged in the business of growing, harvesting, and raising hops under the name of Williams, Hart, and Hilton in Josephine County, Oregon; that during June, 1948, the said partnership was dissolved and distribution of the assets of the partnership was made to the partners thereof, including petitioner.

(d) That the petitioner received a distribution of assets in dissolution of the Williams, Hart & Hilton partnership valued at \$52,820.43; that the said distribution included a 50% interest in an account receivable in the amount of \$5,000.00 due the



partnership from Ben Hilton for withdrawals of partnership funds; that the cost basis to the petitioner of the assets received by the said petitioner from the said partnership was \$48,408.18; that the petitioner paid additional federal income taxes for the calendar year 1948 upon the sum of \$4,412.25 based upon an audit and assessment made by an agent of the Bureau of Internal Revenue; that said sum of \$4,412.25 represented the gain realized by the petitioner upon distribution of a proportionate share of the assets of the Williams, Hart & Hilton partnership to the petitioner, based upon a valuation of the said distribution to the taxpayer at \$52,820.43.

(e) That the petitioner agreed to and did accept a 50% interest in the account receivable in the amount of \$5,000.00, due from Ben Hilton to the partnership, hereinbefore referred to, upon dissolution of the partnership and distribution of the partnership assets; that no part of said account has been received by the petitioner except the sum of \$1,129.10 paid during 1949; that there is unpaid and due petitioner from Ben Hilton, the sum of \$1,370.90; which sum has not been collected or realized by the petitioner.

(f) That Eola Farms, Inc., a corporation, was organized under the laws of the State of Oregon, March 1, 1951; that at all times material herein the said corporation was duly authorized and licensed to engage in the business of growing, harvesting, and marketing hops in the County of Marion, State

of Oregon; that the sole assets of the corporation at March 1, 1951, consisted of a farm containing 185 acres, more or less, together with buildings and equipment necessary to enable the corporation to carry on the business of hop farming, marketing, and sales; that all of the assets owned by the corporation at the commencement of business March 1, 1951, were acquired by transfer from the petitioner in exchange for capital stock of the corporation; that the petitioner was at all times material herein the owner of all of the issued and outstanding shares of capital stock of the said corporation.

(g) That the petitioner's investment in shares of the capital stock of Eola Farms, Inc., was represented by properties turned over to the corporation by the petitioner; that the cost basis of the said properties to the petitioner for the purpose of the determination of gain or loss upon sale or realization was \$71,978.60; that the petitioner's cost basis was made up of the following sums:

Loans to Williams and Thacker partnership, by Grace N. Wil- liams .....	\$54,533.50
Purchase price of interest of L. H. Thacker, Williams and Thacker partnership .....	24,000.00
Capital account, Grace N. Williams	(6,554.90)
	<u>\$71,978.60</u>

(h) That, the entire assets of Eola Farms, Inc., were distributed to the petitioner during July, 1952,

in complete liquidation and redemption of the capital stock of said corporation in accordance with the laws of the State of Oregon governing the dissolution of Oregon corporations; that the records of the corporation reflected the value of the capital and surplus of the corporation at \$57,653.26 as set out on the balance sheet of Eola Farms, Inc., Exhibit C attached to this petition and incorporated herein by reference.

(i) That the fair market value of the assets received by the petitioner upon liquidation of Eola Farms, Inc., and the redemption by that corporation of the shares of capital stock of Eola Farms, Inc., owned by the petitioner was not less than \$126,968.36 on the date that the said assets were distributed to the petitioner; that the petitioner assumed obligations of the said Eola Farms, Inc., aggregating \$54,989.62 upon dissolution of the said corporation; that the said obligations were paid by the petitioner; that the fair market value of the equity received by the petitioner in properties distributed by Eola Farms, Inc., to the petitioner was not less than \$71,978.60 at the time the said distribution was made.

(j) That the properties distributed to the petitioner during July, 1952, in exchange for shares of the capital stock of Eola Farms, Inc., owned by the petitioner included 149.5 acres of land planted exclusively to hops; that the crop of hop vines growing on the said land was not fully formed or matured at the date of distribution of the properties



to the petitioner, and; that the said crop of hops was not at the date of the said distribution or subsequently thereto subject to any contract or agreement of sale upon maturity and harvest.

(k) That the expected life and depreciation claimed by the petitioner for properties used in the production and harvest of hops during the years 1952 and 1953 was reasonable.

(l) That the petitioner did abandon the growing of hops on land received in liquidation of Eola Farms, Inc., during the year 1953; that the petitioner did pull down all trellises and uproot the hop vines during that year; that the petitioner scrapped, sold, or retired all equipment and properties related to the growing of hops during the year 1953.

Wherefore, the petitioner prays that this court may hear the proceeding and determine:

(a) That the petitioner sustained a loss upon a debt in the amount of \$1,370.90 during the year 1951, or in the alternative that said loss represented a loss upon realization of the petitioner's investment in the partnership of Williams, Hart, and Hilton.

(b) That the petitioner's cost basis for the determination of gain or loss upon petitioner's investment in Eola Farms, Inc., was not less than \$71,978.60.

(c) That the fair market value of properties received in liquidation of the petitioner's investment

in shares of capital stock of the Eola Farms, Inc., was not less than \$71,978.60.

(d) That depreciation claimed by the petitioner upon properties used in the operation of a farm and the growing and harvesting of hops during the years 1952 and 1953 was reasonable.

(e) That the petitioner sustained a loss upon the scrapping and retiring of properties and equipment used in the growing and harvesting of hops and that the said loss was deductible from the petitioner's income of the calendar year 1953.

(f) That there is no deficiency of income taxes due from petitioner for the calendar years 1951 and 1952.

(g) That there is due the petitioner refunds of federal income taxes for the calendar years 1951 and 1953, and that this court establish the amount of the said refunds.

/s/ JOHN L. FLYNN,

/s/ BURTON L. COAN.

EXHIBIT A

Letters Testamentary  
Department of Probate

No. 73046

State of Oregon,  
County of Multnomah—ss.

To All Persons to Whom These Presents Shall  
Come, Greeting:

Know Ye, That the Will of Grace N. Williams, deceased, has been duly proven in the Circuit Court for the County aforesaid, and that Ralph E. Williams who is named Executor therein, has been duly appointed such Executor by the Court aforesaid; this, therefore, authorizes the said Ralph E. Williams to administer the estate of the said deceased, according to law.

In Testimony Whereof, I, Si Cohn, County Clerk and Ex-Officio Clerk of the Circuit Court, have hereunto subscribed my name and affixed the seal of said Court, this 29th day of September, A.D. 1954.

[Seal]

SI COHN,

County Clerk and Ex-Officio  
Clerk of the Circuit Court.

By H. W. NEWTON,  
Deputy.

## Certificate

State of Oregon,

County of Multnomah—ss.

I, Si Cohn, County Clerk, Ex-Officio Recorder of Conveyances and Ex-Officio Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, which Court has exclusive jurisdiction of all probate proceedings in said County, do hereby certify that the foregoing copy of Letters Testamentary has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record in my office and in my custody.

I further certify that said Letters are now in full force and effect.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of January, A.D. 1955.

[Seal]

SI COHN,  
County Clerk,

By /s/ E. HOOPER,  
Deputy.

The Law Requires That:

Note—Inventory and Appraisement must be filed within thirty days. Semi-Annual Report between the first and tenth of April and October. Final Report as soon as it is possible to close estate.

## EXHIBIT B

A.R. 90D:ENH

## Statement

Estate of Grace N. Williams, Deceased  
 Mr. Ralph E. Williams, Executor  
 1985 Southwest Sixth  
 Portland, Oregon

Income tax liability for the taxable years ended December 31, 1950; December 31, 1951; December 31, 1952, and December 31, 1953.

Year	Deficiency	Overassessment
1950.....		\$ 21.30
1951.....	\$ 2,806.69	
1952.....	13,060.19	
1953.....		727.10
	<hr/>	<hr/>
	\$15,866.88	\$748.40

The determination of your income tax liability has been made on the basis of information on file in this office.

Taxable Year Ended December 31, 1950

## Adjustments to Income

Net income as disclosed by return....	\$35,093.94
Unallowable deductions and additional income:	
(a) Dividends .....	826.29
(b) Capital gain .....	340.34
	<hr/>
Total .....	\$36,260.57
Nontaxable income and additional deductions:	
(c) Farm income .....	1,150.00
	<hr/>
Net income as adjusted .....	\$35,110.57

## Explanation of Adjustments

- (a) It has been determined that you had dividend income as follows:

Dividends from Incorporated Investors per books.....	\$ 2,431.29
Dividends per return .....	1,507.50

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Increase .....	923.79
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Less dividends from Century Shares, which are capital gains (see adjustments in capital gain under (b) ).....	97.50
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Taxable income is increased accordingly by .....	\$ 826.29
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- (b) Capital Gain adjustment is determined as follows:

Mountain State Power Sale \$15,337.50. Cost \$17,250.00 and Exp. \$161.82.....	(\$ 2,074.32)
--	---------------

Incorporated Investors Sale price (no basis) .....	1,507.50
--	----------

Century Shares Sale price (no basis) .....	97.50
--	-------

Cletrac Tractor Sale price (see “(e)” below) .....	800.00
--	--------

G. M. C. Truck & Trailer Sale price (see “(c)” below).....	350.00
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Total net long term capital gain..	\$ 680.68
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Portion taken into account— 50% thereof .....	\$ 340.34
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Your taxable income has been increased accordingly.

- (c) Sale of Cletrac Tractor and G.M.C. Truck for \$1,150.00 is considered in capital Gains in “b” above and hence your taxable income is reduced in this amount.

## Computation of Tax—Alternative Method

Net income as adjusted.....	\$35,110.57
Less: Exemption—1 x \$600.00.....	600.00
Income subject to tax.....	<u>\$34,510.57</u>
Less: Excess of net long-term capital gain over short-term loss.....	340.34
Balance subject to surtax and nor- mal tax .....	<u>\$34,170.23</u>
Tentative tax .....	\$15,870.65
Tax reduction:	
\$ 400.00 at 13%.....\$ 52.00	
15,470.65 at 9%..... 1,392.36	1,444.36
Combined partial normal tax and surtax .....	<u>\$14,426.29</u>
Add: 50% of capital gain deducted above .....	170.17
Total income tax liability.....	<u>\$14,596.46</u>
Income tax liability disclosed by return .....	14,617.76
Overassessment of income tax.....	<u>\$ 21.30</u>

## Taxable Year Ended December 31, 1951

## Adjustments to Income

Net income as disclosed by return.....	\$26,932.74
Unallowable deductions and addi- tional income:	
(a) Capital gain .....	<u>1,370.90</u>
Net income as adjusted.....	<u>\$28,303.64</u>

## Explanation of Adjustments

- (a) It has been determined that the short-term capital loss on bad debt of Ben Hilton, claimed in the return in an amount of \$1,370.90 is unallowable under the provisions of section 23 (k)(4) of the Internal Revenue Code and your taxable income has been increased in this amount.



## Computation of Tax—Alternative Method

Net income as adjusted .....	\$28,303.64
Less: exemption—2 x \$600.00.....	1,200.00
<hr/>	
Income subject to tax .....	\$27,103.64
Less: Excess of long-term gain over net short-term loss .....	2,721.10
<hr/>	
Balance subject to surtax and nor- mal tax .....	\$24,382.54
Tentative tax .....	\$ 9,965.53
Add: 50% of capital gain deducted above .....	1,360.55
<hr/>	
Total income tax liability.....	\$11,326.08
Income tax liability dis- closed by return.....	\$10,640.63
Less refunded on carry- back adjustment .....	2,121.24
<hr/>	
Deficiency of income tax .....	\$ 2,806.69

## Taxable Year Ended December 31, 1952

## Adjustments to Income

Net income as disclosed by return (loss) .....	(\$11,183.69)
Unallowable deductions and addi- tional income:	
(a) Farm loss, unallowable.....	43,385.90
<hr/>	
Total .....	\$32,202.21
Nontaxable income and additional deductions:	
(b) Capital gain .....	3,413.87
<hr/>	
Net income as adjusted .....	\$28,788.34



## Explanation of Adjustments

(a) It has been determined that the following adjustments are required in the farm income as reported:

Prepaid expense from corporation .....	\$44,165.66
Less: Fair value of growing crop of hops at 7/31/52.....	4,375.40
	<hr/>
Balance unallowable deferred expenses from corporation.....	\$39,790.26
Excessive depreciation on farm property (claimed \$6,671.00—allowable \$3,075.36) .....	3,595.64
	<hr/>
Total unallowable farm deductions .....	\$43,385.90

Your taxable income is increased accordingly.

(b) It has been determined that the following adjustments are required in the capital gain as reported:

Adjusted basis of capital stock under section 113(b) I.R.C. of the Eola Hop Farms, Inc., liquidated July 31, 1952.....	\$65,978.60
--	-------------

Corporate assets received:

Accounts receivable \$	441.63
Land .....	40,957.36
Buildings and equipment .....	18,937.04
Value of growing crops at 7/31/52..	4,375.40*
	<hr/>
	\$64,711.43

Less corporation liabilities assumed:

Note payable to Ralph Williams....	\$10,000.00
Account payable, State Tax Commission .....	27.13

Advance by Grace Williams .....	44,962.49	54,989.62	9,721.81
			<hr/>
Loss on liquidation..			\$56,256.79
Capital gain per re- return .....			4,827.74
			<hr/>
Corrected long-term capital loss			\$51,429.05
Capital loss deduction— limitation .....	(\$ 1,000.00)		
Capital gain reported in re- turn (50% of \$4,827.74).....		2,413.87	
		<hr/>	
Decrease to capital gain re- ported in return.....	\$ 3,413.87		
*Value of growing crops com- puted as follows:			
Gross receipts from sale of hops per return .....			\$49,466.65
Less: Expenses incurred by pro- prietorship in growing, har- vesting and selling the hops....	\$42,015.89		
Depreciation allowable 8/1 to 12/31/52 .....		3,075.36	45,091.25
		<hr/>	<hr/>
Fair market value of hops on 7/31/52 .....			\$ 4,375.40

Your taxable income has been reduced \$3,413.87 in the capital-  
gain reported.

#### Computation of Tax

Net income as corrected.....		\$28,788.34
Less: Exemption—2 x \$600.00.....		1,200.00
		<hr/>
Income subject to tax.....		\$27,588.34
Income tax liability .....	\$13,060.19	
Income tax liability disclosed by re- turn .....	—0—	
	<hr/>	
Deficiency of income tax.....	\$13,060.19	

Taxable Year Ended December 31, 1953

Adjustments to Income

Net income as disclosed by return.....	\$ 7,846.61
Unallowable deductions and additional income:	
(a) Farm loss, adjustment.....	4,987.13
Total .....	<u>\$12,833.74</u>
Nontaxable income and additional deductions:	
(b) Capital gain .....	<u>7,382.77</u>
Net income as adjusted .....	\$ 5,450.97

Explanation of Adjustments

(a) It has been determined that the following adjustments are required in the farm income reported:

Claimed deduction for assets alleged to have been scrapped at	\$ 5,682.17
Less depreciated value of assets (sold for \$664.02) .....	664.02
Farm loss is accordingly decreased .....	<u>\$ 5,018.15</u>
Less additional allowable depreciation on farm equipment.....	31.02
Balance of unallowable loss.....	<u>\$ 4,987.13</u>

Your farm loss is reduced by \$4,987.13 and your taxable income increased in like amount.

(b) It has been determined that your capital gain adjustments are as follows:

Capital loss carry-over from 1952 .....	\$50,429.05
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Capital gain as computed in return at 100%.....	12,765.54
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Corrected net capital loss.....	\$37,663.51
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Capital loss deduction— limitation .....	(\$1,000.00)
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Capital gain reported in return (50% of \$12,765.54) .....	6,382.77
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Decrease in capital gains as reported .....	\$ 7,382.77
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Your taxable income is reduced \$7,382.77 in accordance therewith.

#### Computation of Tax

Net income as adjusted.....	\$ 5,450.97
Less: Exemption—2 x \$600.00.....	1,200.00

Income subject to tax.....	\$ 4,250.97
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Income tax liability.....	\$ 1,008.78
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Income tax liability disclosed by return .....	1,735.88
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Overassessment of income tax.....	\$ 727.10
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## EXHIBIT C

Eola Hop Farms, Incorporated  
1985 Southwest Sixth Avenue, Portland, Oregon  
Balance Sheet at July 31, 1952

Assets			
Accounts receivable....		\$	441.63
Property:			
	Cost	Reserve for Depreciation	Book Value
Farm buildings .....	\$21,961.40	\$17,981.87	\$ 3,979.53
Farm equipment ....	3,431.23	2,358.78	1,072.45
Trellis and irrigation equipment .....	8,705.20	4,862.68	3,842.52
Trucks, tractors, and attachments .....	30,489.08	13,512.66	16,976.42
	<u>\$64,586.91</u>	<u>\$38,715.99</u>	<u>\$25,870.92</u>
			25,870.92
Land .....			40,957.36
Prepaid expenses; (cost of raising, fertilizing, spraying growing crop to July, 1954)			45,412.97
Total assets....			<u><u>\$112,682.88</u></u>
Liabilities and Capital			
Bank overdraft .....		\$	250.00
State excise tax payable .....			27.13
Accounts payable .....			44,712.49
Notes payable .....			10,000.00
Total liabilities			<u>\$ 54,989.62</u>
Capital:			
Common stock .....		\$65,978.60	
Deficit .....		( 8,285.34)	57,693.26
Total liabilities and capital			<u><u>\$112,682.88</u></u>

fully verified.

Received and Filed April 18, 1955, T.C.U.S.

Served April 19, 1955.

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Alleges that the notice of deficiency dated February 3, 1955 (a copy of a portion of which is attached to the petition and marked Exhibit B), was mailed to the petitioner on February 3, 1955, and as thus qualified admits the allegations contained in paragraph 2 of the petition.
3. Denies the allegations contained in paragraph 3 of the petition. Alleges that the deficiencies as determined by the Commissioner are in income tax for the taxable years 1951 and 1952, in the amounts of \$2,806.69 and \$13,060.19, respectively, all of which are in dispute. Specifically denies that there is in controversy, in this proceeding, any amount, whatsoever, of income tax or penalty for the taxable year 1953.
4. Denies that he erred in his determination of the deficiencies in income tax as shown in the notice of deficiency from which the petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph 4(a) to (j), inclusive, of the petition.

5(a). Denies the allegations contained in paragraph 5(a) of the petition. Alleges that Federal income tax returns for the years 1950 to 1953, inclusive, in the name of Grace N. Williams were filed with the Director of Internal Revenue for the District of Oregon. Specifically denies that the net income reported thereon was in the amounts shown in paragraph 5(a) of the petition.

(b) Admits the allegations contained in paragraph 5(b) of the petition.

(c) Admits that the partnership of Williams, Hart and Hilton was dissolved and distribution of the assets of the partnership made to the partners thereof during the calendar year 1948. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph 5(c) of the petition.

(d) and (e) For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraphs 5(d) and (e) of the petition.

(f) Denies that the sole assets of the Eola Farms, Inc., a corporation, on March 1, 1951, consisted of those described in paragraph 5(f). As thus qualified admits the remaining allegations contained in paragraph 5(f) of the petition.

(g) Denies the allegations contained in paragraph 5(g) of the petition.



(h) Admits that the entire assets of Eola Farms, Inc., were distributed to the petitioner in 1952 in complete liquidation and redemption of the capital stock of said corporation in accordance with the laws of State of Oregon governing the dissolution of Oregon corporations. Denies the remaining allegations contained in paragraph 5(h) of the petition.

(i) to (k), inclusive. Denies the allegations contained in paragraphs 5(i) to (k), inclusive, of the petition.

(l) For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph 5(l) of the petition.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of the deficiencies be approved.

/s/ JOHN POTTS BARNES,  
Chief Counsel,  
Internal Revenue Service.

Of Counsel:

THOMAS M. MATHER,  
Acting Regional Counsel;  
WENDALL M. BASYE,  
Attorney,  
Internal Revenue Service.

Filed June 2, 1955, T.C.U.S.



[Title of Tax Court and Cause.]

## STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that the following facts are true and that the same may be so considered and accepted by the Court as offered in evidence by the parties at these proceedings; provided, however, that the stipulations shall be without prejudice to the rights of either of the said parties to introduce other and further evidence not inconsistent with the facts herein stipulated and the admissions to follow:

1. Petitioner withdraws the assignment of error contained in paragraph 4(a) of the petition, relating to an alleged "capital loss" item of \$1,370.90.

2. Petitioner's adjusted cost basis of the capital stock of Eola Hop Farms, Inc., referred to in the assignment of error contained in paragraph 4(d) of the petition is \$64,997.11.

3. The substance of the remaining assignments of error contained in paragraphs 4(b), (c), (e), (f), (g), (h), (i) and (j) of the petition, may be stated in two issues framed as follows:

(a) What was the fair market value of certain buildings, machinery and equipment on July 31, 1952, on which date the decedent acquired the same, among other assets, in exchange for capital stock of Eola Hop Farms, Inc., as a liquidating distribu-

tion and (b) what was the fair market value of a certain growing hop crop on July 31, 1952, on which date the decedent acquired the same, among other assets, in exchange for capital stock of Eola Hop Farms, Inc., as a liquidating distribution?

4. The fair market value of buildings, machinery and equipment, referred to in the next preceding paragraph on July 31, 1952, was \$23,496.65.

5. Effect may be given under Rule 50 to the agreements and stipulations of the parties as set forth in paragraphs 1, 2, 3 and 4, above.

6. The question as to the fair market value of the growing hop crop on July 31, 1952 is the only issue remaining for decision by this Court upon the basis of the following agreed facts and other evidence to be adduced by the parties:

The growing hop crop here in question was planted on the Eola Hop Farms, Inc., located in the County of Marion, State of Oregon. This farm consisted of a total of approximately 165 acres of which 149.5 acres were planted to hops.

Prior to 1950, the farm had been operated by the petitioner and a co-partner, under the partnership of Williams and Thacker. In 1950, the interest of the co-partner was purchased by the petitioner and thereafter, until March 1, 1950, petitioner operated the business as a sole proprietorship. On March 1, 1951, all the assets and liabilities of the sole proprietorship were transferred by petitioner to Eola

Hop Farms, Inc., a corporation, in exchange for all of the capital stock of the corporation. From March 1, 1951 to July 31, 1952, the farming business was carried on by the corporation. Thereafter, farming operations were again carried on by petitioner as a sole proprietorship. In 1953, the hop vines were pulled up and the growing of hops abandoned.

The Eola Hop Farms, Inc., Corporation reported a loss of \$8,597.33 for its operations for the period from March 1, 1951 to December 31, 1951. For the seven months ending July 31, 1952, a loss was reported by the corporation in the amount of \$339.12, however, in the computation of such loss the expenses incurred by the corporation in planting hops in March and caring for the 1952 crop up to July 31, 1952, were not deducted but were carried on the balance sheet of the corporation as an asset in the amount of \$44,165.66. This sum was carried over and utilized by the petitioner in computing the loss attributable to the 1952 hop crop. In addition to the above-referred-to expenses incurred by the corporation, the petitioner, operating as a sole proprietor, after July 31, 1952, incurred further harvesting and marketing expenses attributable to the hop crop in the amount of \$42,015.89.

The receipts from the sale of hops for the years 1950, 1951 and 1952, and the expenses incurred attributable to such receipts are as follows:

Reported	1950	1951	1952
Hop receipts .....	\$108,246.42	\$88,506.31	\$46,445.72
Expenses .....	85,820.81	82,826.96	86,181.55

The total crop production for 1952, in terms of pounds, the salable quantity of the crop, the amounts sold, and the unit price per pound received and the total receipts for the 1952 hops are shown by a statement of account, dated December 31, 1952, attached hereto, marked Exhibit 1-A and by this reference made a part hereof. No contracts for the sale of the 1952 hop crop to dealers or users or any other persons had been executed by either the corporation or the petitioner of July 31, 1952.

The net income reported by petitioner for the year 1950 was \$36,241.51; for the year 1951, \$30,344.40. In her Federal income tax return for 1952 petitioner reported a net farm loss on the operation of the Eola Farms in the amount of \$43,385.90. When this loss was offset against other income received by the petitioner in 1952 the result, as reported on her tax return, was a net loss of \$8,731.03.

/s/ JOHN L. FLYNN,

Attorney for Petitioner.

/s/ JOHN POTTS BARNES,

Chief Counsel, Internal Revenue Service, Counsel  
for Respondent.

## EXHIBIT 1-A

Williams &amp; Hart Hops

P. O. Box 546

Salem, Oregon

December 31, 1952.

Statement in Account With

Eola Hop Farm

1952 Crop Hops

Total crop—Per Hop Control Board.....152,740 Pounds

Salable percentage .....65.7%

Salable allotment .....100,350 Pounds

Sales	Bales	Pounds	Price	Amount
Jos. Schlitz Brewing Co.....	246	48,716	52¢	\$25,332.32
Hans Hinrichs Hops Co., Inc. 32		7,643	67¢	5,120.81
Paul Reinemann Co.....	1	228	42¢	95.76
Paul Reinemann Co.....	13	2,399	42¢	1,007.58
Yakima Chief Ranches Inc...	226	45,697	34¢	15,536.98
	518	104,683		\$47,093.45
Certificate purchase .....		2,399	27¢	647.73
	518	102,284		\$46,445.72
Payment—Dec. 31, 1952.....				5,000.00
Balance .....				\$41,445.72

Filed at hearing, May 4, 1956, T.C.U.S.

In the Tax Court of the United States

Docket No. 57441

ESTATE OF GRACE N. WILLIAMS, Deceased,  
et al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Monday, April 30, 1956

The above-entitled matter came on for hearing,  
pursuant to notice to the parties, at 10:36 o'clock  
a.m.

Before: Honorable Clarence P. LeMire, J.,  
Presiding.

Appearances:

JOHN L. FLYNN,

For the Petitioner.

ALONZO W. WATSON, JR.,

Bureau of Internal Revenue,  
For the Respondent.

### PROCEEDINGS

The Clerk: Docket 57441, Estate of Grace N. Williams, Deceased.

Mr. Watson: Alonzo W. Watson, Jr., for the Respondent.



Mr. Flynn: John Flynn, for the Petitioner.

The Court: Is this case for trial, gentlemen?

Mr. Watson: The case is for trial, yes, your Honor.

The Court: How much time do you estimate for this case?

Mr. Flynn: We estimate a day, your Honor, possibly a little less.

The Court: One day. Any particular preference as to time?

Mr. Flynn: Yes, your Honor, we also would like to have it some time after Thursday for I need——  
(interrupted)

The Court: Well, you realize the Court can't put them all after Thursday. I will just have to do the best I can. Do you have out of town witnesses?

Mr. Flynn: Yes.

The Court: I beg your pardon?

Mr. Flynn: Yes, I do. They do not have to come from a great distance, however, your Honor—approximately less than a hundred miles.

The Court: Very well. I will do the best I can, gentlemen. [3\*]

(Whereupon, at 10:38 o'clock a.m., the calendar call in this matter was concluded. The matter was subsequently set for hearing on Friday, May 4, 1956, and at 2:45 o'clock p.m., the hearing was called, with the same parties heretofore mentioned being present.)

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Clerk: I will call now, Docket 57441, Estate of Grace N. Williams, Deceased. Will counsel please state your appearances?

Mr. Flynn: John Flynn, for the Petitioner.

Mr. Watson: Alonzo W. Watson, Jr., for the Respondent.

The Court: Very well, Mr. Flynn. I will be glad to have your statement.

Mr. Flynn: Most of the facts, in fact, all of the facts in this case have been stipulated between counsel, your Honor, leaving one issue of fact to be determined—that issue involves the valuation of a growing crop of hops on July 31st, 1952, which crop was received in liquidation of a corporation owned entirely by the Deceased, the capital stock of which was owned entirely by the Deceased.

It is the contention of the Petitioner that the value of that crop was less—was worth not less than the cost incurred to that date, or, in the alternative, that the fair market value was somewhat in excess of the four thousand dollars for which the Respondent contends. Petitioner expended some forty—four or five thousand dollars in cultivating the crop up to the date of liquidation of the corporation.

That is the sole issue we make. [4]

The Court: Very well.

Mr. Watson: Respondent agrees that the only issue remaining to be tried by the Court is the fair market value of a growing crop of hops, as of the date of July 31st, 1952. This particular hop crop was transferred in the middle of the growing season from the Eola Hop Farm Corporation to its sole



stockholder, the Decedent in this case. At the time that this transfer occurred, the Corporation had incurred considerable costs in planting and cultivating the crop. After the transfer, considerable additional expenses were incurred, and in 1952, most of the crop was marketed and a sizable loss was incurred as a result of the marketing. This loss was used by the Petitioner as an offset against other income.

Now, it is Respondent's position that the fair market value of this crop as of July the 31st, 1952, was in the sum of not less—or not more than four thousand three hundred and seventy-five dollars and forty cents. The evidence will show that as of July 31st, 1952, there was a serious marketing situation in the crop industry. There was considerable overproduction. The prices—the market price for hops was falling. The United States, in conjunction with the members of the hop industry, had gotten together and made some—had gotten together and arranged to control the production of hops through hop-marketing agreements, and they did this by declaring in the middle of the growing season—in July of the growing season, a part of the crop to be unsalable. At the time that the crop was declared—part of the crop was declared unsalable, [5] the grower had already incurred sizable costs, and he still was required to incur other costs to bring the crop to production, even though he was not able to sell the total amount of the crop.

The evidence will further show that Petitioner, or her representatives, knew of these marketing situations early in July, if not before then; that they

were well aware of the declining market conditions, and that they—they were fully aware that the crop—or at least a good part of the crop would not be sellable in the year '52.

The Court: There is a stipulation to be filed?

Mr. Watson: I ask leave to file stipulation of facts, your Honor, with Exhibit 1A attached.

The Court: Very well, the stipulation with attached Exhibit is received in evidence.

You may call your witnesses.

Mr. Flynn: We would like to call Ralph Williams.

RALPH E. WILLIAMS, JR.

a witness called by and on behalf of the Petitioner, first having been duly sworn, was examined and testified as follows:

The Clerk: Please state your name, Mr. Witness, and your address?

The Witness: Ralph E. Williams, Jr., 1985 S. W. 6th Street, Portland.

Direct Examination

By Mr. Flynn: [6]

Q. Mr. Williams, you are the Executor of the Estate of Grace N. Williams, Deceased?

A. Yes.

Q. And during the year 1952, did you manage the Eola Farm? A. Yes.

Q. What experience have you had in the hop business, Mr. Williams?

(Testimony of Ralph E. Williams, Jr.)

A. Well, the experience has existed over since approximately 1940, having been very active in the production of hops and also being active in other—through other companies in the merchandising brokerage—brokerage of hops.

Q. That is, in addition to raising hops, you also were engaged in the business of merchandising or brokering hops—buying and selling? A. Yes.

Q. Did you, during the year 1952, have active operation of any other hop farms? A. Yes.

Q. What type of hops were grown—I should like to explain, at this point, that all of my questions will be directed to the crops and land—river-bottom land on the Willamette River, in Marion and Polk Counties, in the State of Oregon. What type of hops were grown on the Eola Farm during the year 1952?

A. Fuggles and late clusters—seeded late clusters. [7]

Q. Would you explain, please, what is meant by the term “fuggles” and what is meant by the term “late clusters”?

A. They are two distinct varieties of the hop—the fuggles being a type of hop that was developed over in England and was imported here into this country—the roots were imported into this country, possibly in the middle 1920's. As I say, they are of a distinct variety—of a distinctly different flavor and have a distinctly different market, as far as the brewing industry is concerned. I——(interrupted)

Q. Are these——(interrupted)

A. Pardon.

(Testimony of Ralph E. Williams, Jr.)

Q. Are these the type of hop that are known as "seeded," or "seedless" hop?

A. They can be grown either way; however, the fuggle hop generally is what people in the hops trade or the brewers who consume these hops classify as a seeded hop.

Q. Based upon your experience in the management of this and other farms, what, in your opinion, is the average yield of hop to be expected from farms located on the Willamette River bottom land, during a normal year?

A. From six and a half to seven bales per acre; or converting it to pounds, thirteen to fourteen hundred pounds.

Q. That is, a bale of hops contains, what, two hundred pounds? A. Yes. [8]

The Court: Mr. Flynn, he hasn't told us what this other variety was, "late cluster"; do you——  
(interrupted)

Q. Oh, I'm sorry. Would you continue then?

A. The "late cluster hop" is a hop again that has an entirely different characteristics from the fuggle hop, and I would say predominantly is the typical—when we think of hops, is the predominant variety. It is—the reason that it is called "late cluster" is that it is harvested somewhat later than the fuggle and somewhat later than some other varieties that——(unfinished answer)

Q. And these two types of hop, that is, the late cluster and the fuggles, were grown on the Eola Farms during the year 1952? A. Yes.

(Testimony of Ralph E. Williams, Jr.)

Q. In what proportions were these hops grown, if you recall—that is, the acreage devoted to each?

A. Approximately one-third and two-thirds—my best recollection was there was about a third fuggles and two-thirds late clusters.

Q. Now, then, you answered my question regarding the yield of hops being from six and a half to seven bales to the acre, in a normal year. Would that apply to both types of hops—that is, is the yield to both types the same, or does one type produce more than the other?

A. I would say that on the average, that the yield is approximately the same.

Q. Was the year 1952 a normal year in the Wilamette River [9] area in Polk and Marion Counties, for the growing of hops, that is, up to July 31st, if you recall?

A. To the best of my recollection, I have no recollection of there being anything unusual.

Q. I should like to ask, are the hop clusters of the type grown on vines on the Eola Farm during the year 1952, fully formed at July 31st, in any normal year?      A. No.

Q. Are the clusters fully formed on the vines at the—say, July 31st, of any normal year?

A. No.

Q. Were either the clusters or the fuggles grown on the Eola Farm during the year 1952, fully formed at July 31st, if you recall?

A. I would say no.

Q. Could the quantity of the hop crop be deter-



(Testimony of Ralph E. Williams, Jr.)

mined at July 31st, with any degree of accuracy in an ordinary year?

A. I'm sorry, I didn't understand what you said. Did you say "quality" or "quantity"?

Q. Quantity be determined?

A. Not with any exactness, no.

Q. Not with any exactness. Do you recall whether or not you made any estimate during July 31st, 1952, of the quantity of hops to be obtained from this Eola Farm—that is, if you recall?

A. No, I would say not. [10]

Q. To the best of your recollection now, though, it was a normal year? A. Yes.

Q. To that time? At what time, then, does the hop crop in the Willamette Valley—that is the Willamette River Valley, occur—mature? Pardon me?

A. Historically, fuggles, about the 18th to the 20th of August, and late clusters, generally right after Labor Day, is the yardstick that is generally used. Say, the first week—the latter part of the first week in September.

Q. That is, clusters, some time in the latter part of the first week of September? A. Yes.

Q. And fuggles?

A. Between, generally—generally between the 18th and 20th of August.

Q. Well, if you cannot estimate the—or determine the quantity of the crop you can expect from the vines on July 31st, what is the earliest date on which this quantity can be estimated? Generally?

(Testimony of Ralph E. Williams, Jr.)

A. It—obviously, the closer to the harvest period—in other words, when the hops are mature, the closer that crop may be estimated; but beyond that, I don't believe I could answer your question.

Q. Perhaps, then, you could tell me this: What, if any, is [11] the risk of loss of a hop crop after July 31st, to date of maturity or harvest?

A. Negligible, I would say.

Q. What, in your opinion, and based upon your experience, is the cost of raising a crop to maturity, after July 31st, until harvest—I am speaking now, of crops on the Eola Farm, or in that area?

A. That would range, depending upon labor rates and other possible—other slight variations in price factors, between twenty-two to twenty-five cents a pound.

Q. That is, it would cost twenty-two to twenty-five cents a pound? I don't believe you understood my question, Mr. Williams. I asked the cost of raising a crop from July 31st to—it would be the first week in September or the 18th or 20th of August, when they mature—it is from July 31st on to maturity?

A. Oh, in my other question, I thought you said from the beginning.

The Court: From the time of planting?

A. Yes, from the time of planting. I would say that the cost between July 31st and the time of maturity or the start of harvest is generally a rather negligible item.



(Testimony of Ralph E. Williams, Jr.)

The Court: Well, that doesn't include the cost of your harvesting, does it?

A. No. No, sir, no, we have not touched—  
(interrupted).

The Court: There would be some cost of harvesting? [12]

A. Yes, there is substantial cost of harvesting, your Honor.

Q. But the risk of loss, so far as spraying, dusting, is over? A. Yes.

Q. That is, I should say not the risk of loss from spraying or dusting, my question is: Is the risk of loss from downy mildew and these other pests or diseases for which you spray, practically over at July 31st? A. Yes.

Mr. Flynn: I realize that is a leading question, your Honor.

Q. I would like to ask, does the crop of hops growing upon the vines at July 31st—did the crop of hops growing upon the vines at July 31st, on the Eola Farms, have a market value, if you know?

A. I would say no.

Q. Could the crops growing upon the vines at July 31st, have been sold for future delivery upon harvest? A. Yes.

Q. Do you recall what the market price for hops was at July 31st, 1952, of the market price of hops—I refer specifically to the hops—type of hops raised on the Eola Farm?

A. Yes, it ranged between fifty and fifty-two cents a pound.

(Testimony of Ralph E. Williams, Jr.)

Q. Was there a decline or raise in the market price of hops subsequent to July 31st, 1952, if you know? A. Yes. [13]

Q. There was? A. Yes.

Q. And what was this—was there an increase in the price or a decline? A. It was a decline.

Q. Do you recall approximately what the decline in price was?

A. The latter part of August, the market declined to the range of thirty to thirty-five cents a pound; that is my recollection of it.

The Court: Did that continue on through the first week in September?

A. It stabilized itself at about that level, yes.

Q. But it was, to the best of your recollection, fifty-two cents a pound at July 31st?

A. Yes.

Q. You understand, Mr. Williams, that I am speaking of 1952 crop hop? A. Yes.

Q. Which were to be delivered after harvest at some future date? A. Yes, sir.

Q. Well, assuming the market price for hops of this type of fifty to fifty-two cents per pound at July 31st, 1952, what, in your opinion, would be the value of the hops on the vine at July 31, '52? [14]

Mr. Watson: I object to that question. There is no quantity involved.

Mr. Flynn: The witness has already testified that those hops can be sold on the—pardon me—if it please the Court, the witness has already testified that there is a market for those hops for future de-

(Testimony of Ralph E. Williams, Jr.)

livery, and he can qualify in regard to the other cost.

Mr. Watson: Well, as I understood the question, there has only been one element to the formula, and that is assuming a price of fifty to fifty-two cents as of July 31st, what would be the value of some undetermined amount of crop? Maybe I mistook your question, Mr. Flynn.

Mr. Flynn: All right. Perhaps I should rephrase it.

Q. (By Mr. Flynn): Assuming a normal crop of hops at July 31st, 1952—you have testified that they are not, at that time, mature—assuming further that the market price for hops of that type was fifty to fifty-two cents a pound——(interrupted).

Mr. Watson: Are you through?

Q. Not yet. Could those hops have been sold for future delivery? A. Yes.

Q In arriving at the realization to the grower at July 31st, 1952, and assuming a sale at fifty-two cents for future delivery, what would be the normal cost of harvesting and baling the hops?

A. That would—would range between twenty and twenty-five cents a pound. [15]

Q. Assuming a sale at fifty-two cents on July 31st, and assuming further a cost of twenty to twenty-five cents per pound for harvesting and baling, how would you measure the amount the grower would receive for those hops?

A. By merely deducting the harvest cost from the sale price.

(Testimony of Ralph E. Williams, Jr.)

Q. Were the hops growing on the Eola Farm subject to contract of sale for future delivery at any time up to and including July 31st, 1952?

A. No, they were not.

Q. Did you contract to sell that hop—that hop crop at a later date?

A. No, not in the—they were sold at a later date, but not contracted——(interrupted).

Q. Yes, I understand that.

A. ——to sell for future delivery.

Q. They were not sold to some particular grower at X number of cents per pound, or they were not sold to some particular broker on the usual contract of X number of cents per pound upon delivery?

A. No.

Q. For what reason did you refuse to contract to sell—I will retract that question—did you have any opportunity to contract for the sale of these hops growing on the Eola Farm at any time near, within a few days of July 31st, 1952? Could you have sold them?

Mr. Watson: Your Honor, I think that question is [16] objectionable. There doesn't seem to be any foundation for it. It is pure speculation.

The Court: Well, he can state whether or not he had anyone make any offers or anything of that kind. That would be the only thing I would know that he would know about.

Mr. Watson: I believe, your Honor, he testified that he hadn't had any offers or that there have been no contracts.

(Testimony of Ralph E. Williams, Jr.)

The Court: Let him answer the question.

A. I would have to qualify my answer by saying that I didn't recall—I can't recall whether I had any offers or not, but I didn't intend to sell at that time, though.

Q. You say you did not intend to sell at that time? A. Not at that market level.

Q. And what was the reason, specifically, if you can recall, why you didn't sell?

A. As any hop grower, I thought the market was going to go up.

Q. What was the—what is—what was, during the years 1952 and prior, the average cost of raising hops on Willamette River bottom land to maturity and harvest during a normal year? If you know, and on what yield per acre is your statement based? Now, I don't mean the harvesting. I mean up—the growing, cultivating of fertilizing the hops up to maturity and before harvest?

A. Twenty—twenty—we will say in the range of twenty-two to twenty-five cents a pound; and that figure is based upon average [17] yield, which I indicated ranged from thirteen to fourteen hundred pounds per acre.

Q. Mr. Williams, I hand you Exhibit 1A, will you tell me what it is, please?

Mr. Watson: What—excuse me, what was that last question?

Mr. Flynn: I wanted him to identify Exhibit 1A.

A. This purports to be a copy of the settlement invoice between the firm of Williams & Hart and the



(Testimony of Ralph E. Williams, Jr.)

Eola Hop Farm, for the—covering the 1952 crop of hops.

Q. And does that statement show the pounds of hops grown or harvested on the Eola Farm, for the year 1952?      A. Yes.

Q. And what is that poundage?

A. It shows one hundred and fifty-two thousand seven hundred and forty pounds, and a hundred thousand three hundred and fifty pounds, salable allotment.

Q. That is, what became of the hops grown on the Eola Farm which were not sold? That is, the difference between the one hundred thousand pounds that were sold and the hundred and fifty thousand pounds that were grown and harvested?

A. They were destroyed.

Q. And for what reason?

A. Well, they were worthless because we couldn't sell them because they didn't come under the allotment. [18]

Q. Were the hops destroyed—that is, the fifty thousand pounds of hops destroyed, equal in quality to the hops sold?      A. Yes.

Q. If you know?      A. Yes.

Q. Is it correct that the hundred and fifty-thousand pounds—pardon me, I will retract that. Could you tell me the acreage in hops—planted to hops on the Eola Farms during the year 1952?

A. Roughly, one hundred and fifty acres.

Q. Is it correct to state that the hop production amounts to only five bales to the acre, according to

(Testimony of Ralph E. Williams, Jr.)

that statement?           A. Yes.

Q. Do you know or recall why the hop crop grown on the Eola Farm during the year 1952 yielded only five bales to the acre instead of what would have been a normal crop, as you have previously testified? Do you know or recall the reason?

A. Well, I recall the principal reason being that the crop as it matured was of a very friable nature, and we had extreme difficulty with our machine—mechanical harvesting operations and the loss of wastage of hops was exceptionally severe that year.

Q. Reading from that statement, can you tell me when the Eola Farms was paid for the hops sold from the 1952 crop?

A. Well, the statement is dated December 31st, 1952.

Q. Do you know or recall the date on which the hops themselves were sold? [19]

A. Only generally during the months of from October through December.

Q. Generally through October and December. When did the Eola Farms receive notice of the quantity of the 1952 crop of hops it would be permitted to sell, if you can recall?

A. Mid-December of 1952.

Q. That would be the final or the preliminary notice?

A. My recollection was that was the final.

Q. Were—was the Eola Farms notified prior to December of the—a tentative allotment of hops it



(Testimony of Ralph E. Williams, Jr.)

would be permitted to sell from the 1952 crop, if you recall?

A. I can't recall—I can't recall the Control Board practices. They were changed from year to year, I can't recall their practice. Generally, they submitted preliminary allotments on a piecemeal basis, at an earlier date than the final allotment—the issuance of the final allotment.

Q. Do you recall whether they issued any preliminary allotment or preliminary estimate of the amount of hop you would be permitted to sell prior to July 31, 1952; that is, if you can recall?

A. No, they did not.

Q. Am I to understand from your testimony that the final allotment received from the Hop Control Board, was received after the crops were harvested and baled? A. Yes.

Q. When would they be normally harvested and baled? I [20] believe you testified to that once, but——(interrupted)

A. Well, as I indicated, fuggles varieties, harvest generally starts the 18th to the 20th of August, and the late cluster harvest starting in the latter part of the first week in September; the harvest generally completed by the 20th to the 22nd of September, and the hops are of course dried and baled as they are harvested, so I would say that the very last date would probably be—the last bale would be baled probably not any later than October 1st.

(Testimony of Ralph E. Williams, Jr.)

Q. Do you mean that you grew a full crop of hops prior to learning the quantity you would be permitted to sell?      A. Yes.

Q. Would your lack of knowledge of the allotment of hops for sale to be granted to the Eola Farm prevent the placing of a market value upon the hop crop, in process of growth at July 31, 1952?

A. Yes

Q. Do you recall the percentage of the total hop crop grown on Eola Farms during the year 1950—1950, which you were permitted to sell by the Hop Control Board?

A. It was, in round figures, eighty-five per cent.

Q. Do you recall the percentage of the total hop crop grown on the Eola Farms during the year 1951, which you were permitted to sell by the Hop Control Board?

A. Again, in round numbers, seventy-three per cent.

Q. Do you recall the percentage of the total hop crop grown [21] on Eola Farms during the year 1952?      A. Sixty-five per cent.

Q. It has been stipulated between counsel that the Eola Farms abandoned the growing of hops during the year 1953. Please explain to the Court in your own words, why the growing of hops was abandoned?

A. The—in the winter of 1952 or early spring of 1953, the Hop Control Program was voted out by the hop growers and with the advent of European hops coming back into the market, there just was no

(Testimony of Ralph E. Williams, Jr.)

money to be made domestically in hop production. The net result of it is that the State of Oregon is not even any longer a factor in hop production to speak of.

Mr. Flynn: Thank you, Mr. Williams. Your witness.

Cross-Examination

By Mr. Watson:

Q. Mr. Williams, I think you testified on direct examination that you managed the Eola Hop Farm in the year 1952, is that correct?

A. Yes, I was the—I managed it for my mother, yes, as I managed her other affairs.

Q. And that would apply to the period before the Corporation was dissolved? A. Yes.

Q. And how long prior to that time had you managed the farm?

A. Since my father's death in 1940. [22]

Q. You'd handled your mother's hop affairs—hop-growing affairs for a considerable period of time, is that correct? A. Yes.

Q. Then you were—you were the person who made the decision on dissolving the Corporation, I suppose? A. No, I would say not entirely, no.

Q. Who else would partake in that decision?

Mr. Flynn: If the Court please, that is not a proper question.

The Court: Well, I can't tell, Mr. Flynn. I don't know what the object is.

Mr. Watson: Your Honor, our purpose in this

(Testimony of Ralph E. Williams, Jr.)

line of questioning is to show that some time in July of 1952, or even earlier than that, Mr. Williams or his associates, were well aware that there would be a loss, and that was one of the reasons they dissolved the Corporation and transferred the assets—the growing hop asset to the Petitioner. We want to show that they were well aware at that time that there would be no market value to speak of for these crops, and that a loss would be sustained.

Mr. Flynn: May it please the Court, I don't think that is material to the issue of the market value of that crop.

The Court: Well, I can't tell, Mr. Flynn, and if it is not material, I can always disregard it, so I will hear what he has to—(interrupted)

Mr. Flynn: All right, sir. [23]

The Court: —say about it, and if it is not material to the issue in this case, I assure you that I will not consider it in evidence.

The Witness: Would you repeat the question, please?

(Previous question: "Who else would partake in that decision?"—repeated by Reporter at this time.)

A. I assume you want to know the peoples names, sir?

Q. Yes, please.

A. Well, one person of course, would—who was naturally involved was my mother—whose property was involved. Another person who was advisory was

(Testimony of Ralph E. Williams, Jr.)

my mother's attorney, Burton L. Coan; then I would say other people to whom I had talked, and we had talked, relative to the future—anticipated future of the propagation of hops for profit in the State, in this area.

Q. Now, what were the considerations in making that decision?

A. The considerations in making that decision were to—that after a determination had been made that the hop crop—or I should say that hops would no longer be grown on this farm—premises, that we would endeavor to rent the farm to a tenant farmer for other purposes and that the—that it would be just too complicated to have a corporation in the way any more, from a bookkeeping standpoint, where we would only be receiving one rent check, and with no liability, and for just from an expense as well as a bookkeeping and an office problem. [24]

Q. Do I understand you correctly that one of the primary factors in that decision was your determination that the growing of hops was no longer profitable?

A. It was not a determination that the present growing of hops was no longer profitable, but that it would not be profitable for the 1953 and forward seasons.

Q. Well, why was it then that the decision was made in the middle of the 1952 growing season?

A. The only thing I can say is that was about the time we got around to it.

Q. Had the decision been under consideration



(Testimony of Ralph E. Williams, Jr.)

prior to that time?           A. Yes.

Q. Is it your testimony then that the decision to dissolve the Corporation was not primarily based on the realization that a loss for the growing of the hop crop in 1952 would be realized?

A. I'm sorry. I got the negative or the positive——(interrupted)

Q. Well, let me rephrase the question then?

A. Please.

Q. Is it not true that one of the primary reasons for dissolving the Corporation in 1952 was the realization that a loss would be sustained on the 1952 crop?           A. No.

Q. Mr. Williams, have you ever been a member of the Hop [25] Control Board?           A. Yes.

Q. Were you a member in 1951?           A. Yes.

Q. Were you also a member in 1952?

A. Yes.

Q. And did you generally participate in the meetings?           A. Yes.

Q. And as I understood your earlier testimony, you have been associated with hop growing for years and years, is that correct?

A. That's right; yes.

Q. Do you recollect the date in 1952 when the hop—Hop Control Board met to make their recommendation as to salable quality to the Secretary of Agriculture?

A. I don't recall the date, sir, but generally—generally it was held—that meeting was generally held in mid-July.

(Testimony of Ralph E. Williams, Jr.)

Q. Would the date of July 17th, 1952, be approximately correct? A. Yes, I would say so.

Q. And that recommendation that was made by the Hop Control Board was accepted by the Secretary almost as a matter of course, wasn't it?

A. Yes.

Q. And in July, then, of 1952, the Board did reach a decision on the salable quality—salable quantity, did they not? [26] A. Yes.

Q. And you knew the results of that decision, didn't you, Mr. Williams? A. Yes.

Q. And am I not substantially correct in saying that at that time they recommended that about thirty-six point one per cent of the total crop be declared unsalable?

A. That would not be the function of the Hop Control Board at that time. They would only set the potential—the possible—what the demand for hops would be, not how big the crop was going to be.

Q. Well, didn't they consider, in reaching their decision, what the total production would likely be?

A. That did not constitute any element whatsoever in that determination.

Q. You mean at the time they met, they didn't have any idea then what the over-all hop production would be?

A. They would have—they would have estimates, yes.

Q. Well, those estimates were generally pretty reliable, were they not?



(Testimony of Ralph E. Williams, Jr.)

A. Sometimes, they have been—sometimes they are and sometimes they aren't. They are merely estimates. But the Control Board only—only sets the salable quantity—so many million pounds available—that would be available for sale.

Q. But for a person in your position, who was well aware of [27] marketing conditions and quantities grown and the effect of a decision of this sort, you could readily interpret what the result would be as far as this crop was concerned, could you not?

A. You mean how much the cut would be?

Q. Yes.

A. I would say within reasonable bounds, yes.

Q. Then, some time in July, you had—had fairly sound reason to believe that at least thirty-five per cent of the '52 crop would not be salable, is that not correct?

A. I would say only from recollection—my recollection probably wouldn't be that close, but I would say that it would be within that range, yes.

Q. And isn't it also a fact that because of your close association with the hop-growing industry you were reasonably certain that that would be the last year of control on hops?

A. No, there were just—there was considerable discontent among the hop growers, but if my recollection serves me correctly, it wasn't—it didn't make itself known until some time—some time considerably later in the fall.

Q. Was it the general feeling in the hop-growing industry that if the controls were taken off, the

(Testimony of Ralph E. Williams, Jr.)

the market would fall away to a considerable extent?      A. Yes.

Q. And that's actually what happened, isn't it?

A. Yes. [28]

Q. And is it not also true that for a considerable period of time prior to the end of controls, there had been a decrease in the amount of acreage planted to hops each year?

A. No, I believe if anything, and it is only recollection—that if anything, there was a slight increase in acreage.

Q. There was an increase in acreage?

A. I think—that would be purely from recollection as to the last couple of years, maybe I had better say that I don't know.

Q. Well, let me ask you once again then. Is it your testimony that the fact—is it your testimony that an anticipated loss on the 1952 crop was not one of the factors—one of the primary factors in your decision to dissolve the Corporation in 1952?

A. It was not one of the primary factors, no.

Q. Was it a substantial factor in that regard?

A. No, I would say not.

Q. You may have explained this before, but what, precisely, were the reasons for dissolving in the middle of the growing season?

A. As I indicated, the determination that the—that that particular acreage—or that particular field would be taken out of hop production, because the hop business had the appearance, as far as 19—as far as the subsequent year of 1953—that it was

(Testimony of Ralph E. Williams, Jr.)

not the type of business—in other words, it would become risky, with no control—was not a business for a widow to be in, and that the ranch was going to be leased for some other purpose, and if there was no longer any reason to have a Corporation, as I said, from a [29] bookkeeping standpoint, and standpoint of execution of papers and all the other details that are incident thereto.

Q. Now, what then was the purpose for forming a Corporation some seventeen months prior to that time?

A. At that stage of the game—I mean—game, I'm sorry. At that stage, the hop business looked like it was going to be on a fairly level plane for quite a number of years, and that in consequence, the earnings of the farm would level themselves out, and for—it was that reason that the Corporation was formed.

Q. Isn't it a fact that your mother had considerable income from other sources during all these years?

Mr. Flynn: I have an objection, your Honor, that is not material.

The Court: I will permit the witness to answer. The objection will be overruled.

Q. Yes, and she had considerable income from other sources in the year 1951, is that not so?

A. I can't recall exactly, sir, but I don't recall if there were any conditions that would cause too much deviation from her ordinary income.

Q. Coming back to the decision in 1952, now

(Testimony of Ralph E. Williams, Jr.)

to dissolve the Corporation, was one of the considerations the fact that your mother might possibly be the beneficiary of a carry-back loss involved in the decision?

A. I have no distinct recollection. As I said, I—it might [30] have been a consideration, as taxes are with everything you do nowadays.

Q. But you don't have any distinct recollection on that point?

A. Not that it was any primary——(interrupted)

Q. Well, was it——(interrupted)

A. I say that—yes, I would assume that probably it was undoubtedly discussed.

Q. Then your testimony is that it was a factor involved in the decision? A. Yes.

Q. Then I understand you correctly then that you did contemplate that there would be a loss on the 1952 crop? A. No.

Q. Well, I thought you previously testified that you thought it might be possible for your mother to get a carry-back loss?

A. If there was a carry—if there was a loss, yes, sir.

Q. But you considered it as a possibility—there was a distinct possibility there would be a loss on the 1952 crop?

A. In July, I can't think there—that there was anything in the picture that would indicate that—that would indicate that there was a loss, with a

(Testimony of Ralph E. Williams, Jr.)

sixty-five per cent salable allotment, of course, it was obvious there would not be too much profit.

Q. And was it also true that the market had been rather soft during that time?

A. Yes, it was—it was inactive, as I recall, from——(unfinished answer) [31]

Mr. Watson: I have no further questions.

Mr. Flynn: I have two more questions, if you please.

The Court: Let's hasten along, gentlemen, so we can conclude this.

Mr. Flynn: All right.

### Redirect Examination

By Mr. Flynn:

Q. Mr. Williams, I ask you, were you not aware that the Internal Revenue Code provided—contained a provision enabling a sole stockholder to obtain the assets of a corporation without paying any tax thereon during the year 1952? A. Yes

Q. Were you further aware that the sole stockholder obtained these assets, subject to certain restrictions, at the same cost basis to the Corporation during the year 1952?

Mr. Watson: I object—I object to that, your Honor. I don't there—I don't think there is any evidence in the record about the cost basis.

Mr. Flynn: If it please the Court, we have stipulated what the cost basis is.

The Court: Well, you are asking something that



(Testimony of Ralph E. Williams, Jr.)

probably no one but a lawyer could answer, Mr. Flynn; however, I am going to let him answer—whether or not he had been advised that, or somebody—or whether somebody had given him the information. [32]

Mr. Flynn: If it please the Court, my question is directed to this: Counsel has contended that the purpose of dissolving during the year 1952 was to obtain a substantial operating loss. I wish to point out to the Court that the taxpayer had competent advice to remind him that he could have obtained the same effect by tax-free liquidation.

The Court: I think that is the way you should examine him—ask him whether or not he had been advised to that effect, and not whether he knows it.

Q. (By Mr. Flynn): Mr. Williams, were you so advised by counsel?           A. Yes.

Q. I would like—there was one question that did confuse me—I didn't get the answer—could you tell me, please, if you recall, when the controls were taken off?

A. My recollection was it was some time in the spring of 1953.

Q. In 1953. Thank you.

The Court: No further questions?

Mr. Flynn: No further questions.

Mr. Watson: No further questions.

The Court: Very well, you may stand aside, sir.

(Witness excused.)

The Court: Call your next witness, Mr. Flynn.

Mr. Flynn: We would like to call Frank [33] Kennedy.

**FRANK KENNEDY**

a witness called by and on behalf of the Petitioner, first having been duly sworn, was examined and testified as follows:

The Clerk: Please state your name, sir, and your address.

The Witness: Frank Kennedy, Independence.

**Direct Examination**

By Mr. Flynn:

Q. What is your occupation, Mr. Kennedy?

A. Farming.

Q. And do you engage in a particular type of farming?

A. I had been growing hops.

Q. For how long have you been growing hops?

A. About thirty-five years.

Q. Where have you been growing hops for the past thirty-five years, is it in one location?

A. Yes, Horst (phonetic) Ranch at Independence.

Q. How far is the Horst Ranch in Independence from the Eola Farm, if you know? Approximately?

A. Our line is about a half a mile from the boundary.

Q. Were you, during the year 1952, familiar with other farms in the vicinity of your farm and the crops raised on these farms at that time?

A. Yes, I was.



(Testimony of Frank Kennedy.)

Q. What kind of crops were raised? [34]

A. Well, around that district, mostly hops were grown.

Q. Is the land in that area, the area of the Horst Farm—Horst Farm, of the same general type as that on which you conduct operations at the Horst Farm—I mean—by that, I mean, is the Horst Farm located on river bottom land? A. It is.

Q. Do you know whether the Eola Farm is also located on river bottom land? A. Yes, it is.

Q. Was the Eola Farm used for growing hops in 1952? A. Yes.

Q. What variety of hops were grown on the Eola Farm during 1952, if you know?

A. They grew the two varieties—the popular varieties, fuggles and clusters.

Q. Are these the type of hops that was raised on the farm that you operate?

A. The same, yes.

Q. What is the average yield of seeded hop to be expected from Willamette River bottom land in that area, if you know—during a normal—the average yield in a normal year?

A. I'd say five and a half to seven bales to the acre.

Q. What was the average of cost of production of hops to maturity and before harvest during the year 1952, if you know?

A. Well, it would just be an estimate. We usually figure [35] that our growing costs up to harvest are twenty to twenty-five cents a pound, and

(Testimony of Frank Kennedy.)

I'd say the average is probably twenty-two and a half cents.

Q. Do you mean that it would cost twenty-two and a half cents per pound of actual hops produced, or is this average cost based upon the estimated yield of five and a half to seven—(interrupted).

A. Well, it would be either the—you—your actual costs are what you produced, but you could—you usually figured on an estimated yield.

Q. And your statement of twenty-two and a half cents, is that what I understood?

A. Twenty-two and a half.

Q. Is based upon an estimated yield?

A. On a general average.

Q. Yes, I understand.

A. For a normal year.

Q. Based upon your experience, is it possible to determine with any degree of accuracy, the yield of seeded hop vines at July 31st of any year, growing—with those vines growing on Willamette River bottom lands?

A. Not with any degree of accuracy. You can always estimate a crop, but it may be off as much as thirty per cent or we may be—I mean, under thirty per cent or over ten or fifteen, you very seldom are over. [36]

Q. I am speaking of July 31st, now?

A. Yes, I know.

Q. That is—am I to understand then, that the crop can either increase or decrease as much as thirty per cent during the remaining period until

(Testimony of Frank Kennedy.)

they mature?           A. I think so.

Q. Do you recall whether the seeded hops grown on Willamette River bottom land, during 1952, were matured at July 31st?           A. No.

Q. Based upon your experience, and assuming a market value for baled seeded hops of fifty to fifty-two cents a pound, what, in your opinion, would be the fair value of a normal crop of seeded hops on the vine at July 31st?

Mr. Watson: I object to that question. There is no quantity in it again.

Mr. Flynn: If the Court please, the witness has testified that it is not possible to estimate the crop on July 31st. I'll restate—I'll withdraw the question.

Mr. Watson: Maybe I don't understand the question, your Honor—I can't see where he is going to get a value if he doesn't have the quantity factor.

Q. Well, would you, as a grower of hops, sell your crop at July 31st of any year for less than the cost of production—the average cost of production to which you have testified?           A. No. [37]

Q. During the year 1952, would you have sold your growing crop of seeded hops for less than thirty cents a pound on July 31st, provided the market price at that date was fifty cents per each pound of hops that you could deliver after harvest?

A. Will you please ask that question again?

Mr. Flynn: Would you read that question back, please?

(Testimony of Frank Kennedy.)

(Previous question repeated by Reporter at this time.)

A. Certainly not.

Q. Do you know whether there was a crop failure affecting hops during the year 1952?

A. There was none.

Q. There was none. Do you know of any abnormal weather conditions—do you know or can you recall any abnormal weather conditions prior to July 31, 1952, which would have retarded or curtailed the growth of the hops prior to July 31 of that year?

A. I don't recall anything on that.

Mr. Flynn: Thank you.

### Cross-Examination

By Mr. Watson:

Q. Mr. Kennedy, I believe that you testified that you wouldn't sell your hops in any year for less than the amount of your incurred expenses, is that correct?

A. On July 31st.

Q. Why on July 31st?

A. Well, the crop was made, and I certainly wouldn't sell it [38] for less than the profit. I would want a profit out of it, because I had done all the work and I have invested all the money.

Q. Well, assume that your expenses are forty-five cents per pound, and that the market at that—the future market is nonexistent, and somebody offered you twenty cents per pound, would you then sell it?

(Testimony of Frank Kennedy.)

A. If the—if the market was forty-five—(interrupted).

Mr. Flynn: If I may ask the Court's indulgence, counsel has not, as he pointed out to me, qualified his question by relating it to the production of hops. Is he talking about forty-five per cent of the hops actually harvested some month or two months later, or is he talking about forty-five cents per pound of the estimated crop at July 31st?

The Court: Reframe your question, Mr. Watson. I think the question is clear, but reframe it to be sure, so we won't have to read it back.

Q. Mr. Kennedy, assume that you have costs of thirty cents a pound on your hops, and that all of a sudden the demand for hops was completely eliminated—the future demand for hops is completely eliminated, and you were well aware of that fact, and as of July 31st, 1952, of any year, somebody offered you fifteen cents a pound for those hops, you'd sell then, wouldn't you?

A. Well, I don't think I would, no.

Mr. Watson: I have no further questions.

Mr. Flynn: No questions. [39]

The Court: Very well, you may stand aside.

(Witness excused.)

The Court: Any further witnesses?

Mr. Flynn: Yes, two witnesses, and I will try and make them brief, your Honor.

The Court: Very well.

Mr. Flynn: Roy Nelson, please.

## ROY NELSON

a witness called by and on behalf of the Petitioner, first having been duly sworn, was examined and testified as follows:

The Clerk: Please state your name and your address, for the record.

The Witness: My name is Roy Nelson; I live at Salem, Oregon.

## Direct Examination

By Mr. Flynn:

Q. What is your occupation, Mr. Nelson?

A. I am a vice president of the United States National Bank.

Q. In Salem? A. Yes, sir.

Q. Do your duties involve the making of loans on agricultural crops? A. I do.

Q. Are you familiar with the crops grown on Willamette—that were grown on Willamette River bottom land in Polk and Marion [40] Counties during the years 1952 and prior? A. I am.

Q. Are you familiar with the hop business, having made loans?

A. I have made loans to hop growers on both the production of hops and for hops after harvest.

Q. How long have you been making such loans for the bank, Mr. Nelson?

A. Almost thirty years.

Q. Do you or your bank make loans on growing crops prior to maturity and harvest?



(Testimony of Roy Nelson.)

A. On practically all advances on growing hops, they are made prior to maturity.

Q. Did you or your bank make such loans during the year 1952?           A. I think so.

Q. To the best of your recollection you did?

A. Yes, sir.

Q. Based upon your experience as a loan officer, what is the average yield of seeded hops to be expected on hops grown on Willamette River bottom land, if you know?

A. The yield, of course, will vary with the farming operation, but we generally estimate that the yield should be anywhere from a thousand to fourteen, fifteen hundred pounds per acre, broken down into bales, that would be anywhere from five to seven and a half [41] bales.

Q. All right. Based upon your experience as a loan officer, and assuming an average yield of hops on Willamette River bottom land, and assuming further a market price for hops of fifty to fifty-two cents per pound, what formula would you have used in determining the amount of loan—a loan to be made upon a crop of hops growing at July 31, 1952?

A. You mentioned a price ranging from fifty—fifty-two cents——(interrupted).

Q. Yes.

A. ——or in that neighborhood. We would probably discount the price just a little bit to be on the safe side, and deduct from that, what we estimate the harvest costs to be, which hardly ever are less than twenty cents and sometimes as much as

(Testimony of Roy Nelson.)

twenty-five cents, and we would aim to confine our loans then to a maximum of what could be reasonably expected to be received for that particular crop, whether it were hops, corn, potatoes, mint, or what have you, over and above the harvesting costs. On the hypothetical question that you posed there, Mr. Flynn, if the market price were fifty cents deducting from that at least twenty cents or perhaps more for harvesting costs, we would loan a maximum of one-half of the difference of thirty cents, or roughly fifteen cents per pound on the estimated crop, at that stage.

Q. Can we summarize that as saying that you take the market price, deduct the harvest costs, plus a little margin for safety [42] and end up with fifty per cent of the balance?

A. That is exactly what I meant to convey.

Q. Would you have made such a loan upon the Eola crop during the year 1952, had such loan been requested?

Mr. Watson: Now, I object to that, your Honor. I don't think he's competent to answer that question.

The Court: I think it is highly speculative. I don't think we can limit it to one, but would you have made that to Eola or any other reputable firm? Let's not limit it to one firm.

Q. Would the amount arrived at by your formula as the amount of a loan be more or less than the cost of growing a hop crop upon river bottom land—answer from your experience, if you know

(Testimony of Roy Nelson.)

A. It would be less. The theory behind that, of course, is that we would like to have the borrower have something in the production of the crop himself.

Q. That is, you would not lend what you consider to be the full value of the crop?

A. That's right.

Q. Based upon your experience as a loan officer, what, in your opinion, was the average cost of growing a crop of hops on the Willamette River bottom land to harvest time during the year 1952, if you can recall?

A. A pretty good average would be twenty-five cents—twenty-five cents a pound. [43]

Q. By average of twenty-five cents a pound, do you mean twenty-five cents a pound upon the actual hops produced or upon the estimate of the hops to be produced?

A. No, on the actual amount of hops produced. That's before picking costs.

Q. Yes, I understand that. Do you recall whether there was a failure of the hop crops in the Willamette River area during the year 1952?

A. Not to my recollection, no.

Q. Based upon your experience and knowledge of the hop industry, how closely can a crop of hops be determined at July 31st, in the Willamette River bottom land area of Marion and Polk Counties?

A. Well, it has been my observation that at that stage, July 31st, the crop is practically made through. It has to mature some more before it is

(Testimony of Roy Nelson.)

ready for harvest, but at that stage, you can definitely determine and estimate quite closely of what the crop will be, and the danger from practically all hazards has passed by that date.

Mr. Flynn: Thank you, Mr. Nelson.

### Cross-Examination

By Mr. Watson:

Q. Mr. Nelson, referring to your formula that you use in making the loans, would the fact that thirty-five per cent of the crop would be declared unsalable at the end of the year affect your formula at all? [44]

A. Certainly, to the—to that extent.

Q. It would affect it to that extent?

A. Yes.

Q. And the result would be that you would not loan on the full amount of the crop, would you?

A. Not during the years when your allotments were in effect.

Mr. Watson: That's all.

The Court: Are you through with this witness?

Mr. Flynn: Yes, I am, your Honor.

The Court: You may stand aside, sir.

(Witness excused.)

Mr. Flynn: Mr. C. W. Paulus, please.

C. W. PAULUS

a witness called by and on behalf of the Petitioner, first having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Flynn:

Q. Mr. Paulus, what is your experience in the hop business?

A. I have been interested in and operating in the hop business since 1933.

Mr. Watson: Your Honor, for the purposes of this trial, we will stipulate that Mr. Paulus is a qualified hop man.

The Court: Very well.

Q. Where are you presently employed, Mr. [45] Paulus?

A. Vice President of Williams & Hart, Oregon Corporation.

Q. The Williams is the Ralph E. Williams in this case? A. Yes.

Q. In your capacity as Vice President, what—approximately what volume of hops do you buy and sell each year?

A. Oh, from a volume of twenty-five thousand bales down to seven, eight, ten thousand bales.

Q. You are familiar with the types and varieties of hops grown on Willamette River bottom land in Polk and Marion Counties? A. Yes, sir.

Mr. Flynn: If it please the Court, may I lead the witness a little bit? I can speed it up.

The Court: I beg your pardon?



(Testimony of C. W. Paulus.)

Mr. Flynn: If it please the Court, may I lead the witness a little bit? I can speed this up.

The Court: Unless counsel objects, you may do so.

Mr. Watson: No objection.

Q. (By Mr. Flynn): You are familiar with a hop farm called Eola and the variety of hops raised on that farm during the year 1952? A. Yes.

Q. What kind of hops were grown there?

A. Fuggle hops and late cluster hops.

Q. Can you recall or estimate the frequency of your visits to the Eola farm during the period in which the hops were growing on the vines during the year 1952? [46] A. Yes.

Q. How do you so recall?

A. The visits were quite frequent, in view of the fact that the Eola Hop Ranch was located on the way to the McLaughlin (phonetic) Farm, which Williams & Hart was operating, and I would pass by Eola Farm on the way to the McLaughlin Farm.

Q. Did you assist in any way with the management of the Eola Farm during the year 1952?

A. No.

Q. Did you have an opportunity to observe the growth and development of the crop of hops grown on the Eola Farm during the year 1952, particularly up to July 31? A. Yes.

Q. Was the year 1952 up to July 31 a normal year for growing hops, if you can recall?

A. To my recollection, it was a normal year.

Q. Based upon your experience with crops of



(Testimony of C. W. Paulus.)

Q. Hops grown on Willamette River bottom land, can you state the average yield of seeded hops which could be expected to be obtained from such lands in a normal year?

A. Did I understand you to inquire if I anticipated that the normal——(interrupted).

Q. What would be the average yield of seeded hops on Willamette River bottom land, during a normal year?

A. From six and a half to seven—seven and a half bales. [47]

Q. Do you recall whether the hops observed by you while growing on the Eola Farm were equal to the average of hops grown—growing on other farms on the Willamette River bottom lands in Polk and Marion Counties, as observed by you during the year 1952?

A. I would say that it was about the normal prospect.

Q. Is land on which hops were grown by the Eola Farm during 1952 the type from which such yield could be expected? A. Yes.

Q. When do hops of the type grown upon the Eola Farm, and upon your own farm, mature?

A. The fuggle hops, the early hops, about August the 20th to the 26th, and I am stating that since there were several years that we began our harvest operation on the fuggles as late as the 26th and 27th, and on the late hops, the late cluster hops, from, oh, the 5th of September to as late as the 10th and 11th of September.

(Testimony of C. W. Paulus.)

Q. Is it possible to determine the quantity of a hop crop of this type—of the type grown upon the Eola Farm during the year 1952 at July 31st, under normal conditions?

A. It is possible to estimate, yes, but not possible to determine.

Q. Why isn't it possible to determine it accurately? A. There's so many—(interrupted)

Q. Explain in your own words.

A. —other factors that may come into the maturity problem. As a matter of fact, as of July 31, the hops are in the bloom. You [48] cannot determine whether or not—they may finally make hops, so-called. It is a flower that is merely budding and that hop, which is a flower, may not even come into maturity. It may—it could be burned off, so far as that is concerned. It doesn't happen very often, but the equation is there that you cannot make a determination as of July 31.

Q. But you can estimate the crop?

A. Estimate, on the basis of vine growth.

Q. What would—with what degree of tolerance in your opinion?

A. Oh, I would say, a bale or two bales' tolerance variance.

Q. That would be two to four hundred pound per acre? A. That's right.

Q. Is your recollection of the period prior to July 31, 1952, favorable or unfavorable to the growth of hops in the Willamette River bottom land area?

(Testimony of C. W. Paulus.)

A. My recollection, the growing—during the growing period, conditions were favorable.

Q. Do you recall the prevailing market price at July 31, '52, for baled and dried hops of the seeded variety growing on the Eola Farm during that year, 1952?

A. It was around forty-nine to fifty-two cents.

Q. Do you know whether the hops grown—growing on the Eola Farm at July 31, 1952, were subject to—under—to sale, [49] under contract at that day?

A. They were not.

Q. Isn't it true that you or your firm usually bought the hops on the Eola Farm?

A. Yes.

Q. When, to the best of your recollection, did your firm buy the 1952 allotment of crop available for sale by Eola Farm?

A. I don't know the exact dates, but it was subsequent to October 1, and between October 1 and December—early December, I would say.

Q. You have testified that you also managed the Williams & Hart Farms, Inc., or Williams & Hart—Will Hart (phonetic) Farm, I guess you would call it, during the year 1952?

A. Didn't manage it, no.

Q. The McLaughlin Ranch?

A. Did not manage the Fairfield (phonetic) or Will Hart Farm, no.

Q. You did not. How is the value of a growing crop of hops determined, if you know? I'm sorry, how is the value of a growing crop of hops at maturity determined, if you know?

(Testimony of C. W. Paulus.)

A. I don't know whether——(interrupted).

Q. Perhaps I will retract that question and get at it some other way. How is the market price that is to be bid for seeded hops determined? Would you explain in your own words?

A. Which is—the determination of market price is a [50] competitive factor in the trade, and largely evaluated and on the basis of what the brewing trade will pay for hops in domestic competition and or foreign competition.

Q. Could the value of the crop growing on the Eola Farm at July 31 have been determined by you?

A. It may have been estimated, but not determined.

Q. Could you have sold the crop growing on the Eola Farm at that time?

A. Yes, we could have sold it, had the Eola Corporation been willing to sell.

Q. A factor in the selling would be also a question of the determination as to the allotment of hops you would be willing to sell, or be permitted to sell—Eola would be permitted to sell, pardon me?

A. That would have been a factor, yes.

Q. When, to the best of your recollection and knowledge, did you first receive notice of what the allotment would be for the farms in that area?

A. Tentative allotment, to my recollection, the latter part of October and the final allotment was just a few days before Christmas, it might have been the 18th or 20th of December.

(Testimony of C. W. Paulus.)

Q. Do you recall—I may have asked this question—I have skipped quite a little here—do you recall whether—at what dates or approximately what dates you purchased the hop crop grown on Eola Farms?

A. I can't say what date, unless we refer to—refer to the [51] records——(interrupted).

Q. Well, approximately what time?

A. ——I would say between October and December, in 1952, at various times.

Q. Had you received your notice of your tentative allotment—oh, you testified that it was during October, didn't you?      A. That's right.

Q. Is it correct to state that the purchases you made of the Eola crop during and after October were intended to be for delivery after Eola was informed by the Hop Control Board of the proportion of the 1952 crop it would be permitted to sell?

A. That's right.

Q. Did you purchase the entire crop of hops grown on the Eola Farm during the year 1952?

A. No, we merely purchased the salable percentage.

Q. Do you recall what the salable percentage of that crop was during the year 1952?

A. Slightly in excess of sixty-five per cent.

Q. Did you buy or sell the 1951 hop crop raised on the Eola Farm?      A. Yes, we did.

Q. What proportion of the 1951 crop was permitted to be sold by the Hop Control Board, if you recall?



(Testimony of C. W. Paulus.)

A. It is my recollection that it was about seventy-four per cent.

Q. Seventy-four per cent and sixty-five per cent in 1952? [52] A. (Affirmative nod.)

Q. Did you buy or sell the 1950 hop crop raised on the Eola Farm? A. Yes.

Q. What proportion of the 1950 hop crop was permitted to be sold by the Eola Farm?

A. That was slightly in excess of eighty-five per cent.

Q. That is, the amount of the percentage of crop that you would be permitted to sell, would then have a very material bearing upon the revenues to be derived from that crop, is that correct?

A. (Affirmative nod.)

Q. Did you at any time have any information prior to the harvest of the hop crop, of the allotments to be made by the Hop Control Board?

The Court: In what year?

Q. In—during the year 1952, I'm sorry.

A. No formal information, no.

The Court: Well, did you have any informal information?

Q. Yes; did you——(interrupted).

The Court: Of any kind?

A. I was not in attendance at the Control Board meeting, and the fact is, was absent during most of the part—most of July, after the middle of July was gone for two weeks, and following that, I can not recall, but unquestionably had conversation



(Testimony of C. W. Paulus.)

with Mr. Williams, but had no formal information as to what the Secretary [53] would determine as the salable percentage.

The Court: I see. Very well.

Q. Do you recall whether there was any change in the market for seeded hops after July 31st, 1952?

A. Yes.

Q. What was the nature of the change, and when did it occur, if you recall?

A. In late August—I refer to the end of August, and in September, there was a drop in the market; as a matter of fact, an average of—from thirteen to fifteen cents per pound in price. Later, then, that carried through until September. Later in October, the market advanced again—picked up more in November, and then in December, reached a point where it was higher than it was at any time in July, and even higher than it was earlier in the year. My recollection is that the market for seeded hops in December was up to fifty-two, -three cents, and on seedless, up to sixty-two, sixty-three cents.

Q. The hops grown on Eola would be seeded?

A. Seeded, yes.

Mr. Flynn: That is all. Your witness.

(Testimony of C. W. Paulus.)

Cross-Examination

By Mr. Watson:

Q. Mr. Paulus, what caused the drop of the market in August of 1952, do you happen to know?

A. I can't say what it is. That happens very often in the [54] market. Brewers have bought their supplies that they may feel they wish to commit themselves for just prior to that time, and then wait and see what the ultimate crop may be. As a matter of fact, that is happening right today, in the market.

Q. You were a member of the Hop Control Board in 1952, I suppose?

A. I was not.

Q. You weren't a member then?

A. (Negative nod.)

Q. You were aware of the procedure the Hop Control Board followed, though, were you not?

A. Oh, yes.

Q. Was it your understanding that the recommendation made by the Hop Control Board was fairly certain to be adopted by the Secretary of Agriculture?

A. I would say that I speculated that it may not be.

Q. It may not be, but as a matter of fact, in the years that the program was in operation, the decision of the Board was adopted, was it not?

A. Not in all cases, no.

Q. Was there any sizeable change between the

(Testimony of C. W. Paulus.)

recommendation in the amount that was finally—and the amount that was finally declared to be not salable?

A. In 1950, there was a five-thousand-bale variance, which percentagewise, as against the total quantity, may not sound very much, [55] but can make or break a market. Five thousand bales may do that in the hop industry.

Q. In 1951, the recommendation was adopted, was it not?

A. Yes, very nearly, is my recollection; yes.

Q. Were you a member of the——(interrupted).

A. I never have been a member of the Hop Control Board.

Q. Never were?                      A. No.

Q. As a grower, though—I mean, as a dealer, you kept pretty close tabs on what the Board recommended, did you not?

A. To the extent that information was available, yes. It was our business to.

Q. It was very vitally so, wasn't it not?

A. I say, it was our business to maintain information on it, yes.

Q. But the amount of the crop that was declared to be salable each year was probably the main factor in determining whether you made a profit or not, was—is that not so?                      A. Not entirely.

Q. No, not entirely, but it was a substantial factor, was it not?

A. It had an influence, yes, but was not the—was not the entire basis, since the growers voted in

(Testimony of C. W. Paulus.)

the marketing agreement in order to make it a profitable business.

Q. But wasn't it true that the growers usually had to incur [56] almost all their costs before they—before the salable allotment was made—well, they had to incur all their growing costs, no matter whether they could sell the total crop or not?

A. Largely; largely, yes, since these determinations were not made by the Control Board until some time in July, so the major portion of the growing costs were already incurred, that is correct.

Q. So if thirty-five per cent of the crop was declared to be unsalable, you had sizeable costs tied up in thirty-five per cent that you couldn't expect to realize, now, is that not correct?

A. If you had known that to be the fact, yes. And I qualify that by saying that that fact was not determined until the Secretary of Agriculture made that decision.

Q. But weren't most growers and dealers fairly well advised as to what the recommendation would be—what the salable percentage would be in July of the growing year?

A. They knew what had been discussed at the Control Board session—some who were there did others may have gotten it by word of mouth, but it was definitely not determined that year that the recommendation may be accepted by the Secretary of Agriculture, since it was in percentage quantity so much higher than anyone had anticipated, or that

(Testimony of C. W. Paulus.)

he Secretary had previously approved on any commodity, as I understand it.

Q. Then it is your testimony that the growers and the dealers didn't estimate that the unsalable quantity in 1952 would be anywhere near as large as it was? [57]

A. I would say it this way: That there was considerable thinking that the salable quantity may not be determined on the basis of the Control Board's recommendation, by the Secretary of Agriculture.

Q. I don't think that's responsive to the question. I think I asked if they were aware or is it your testimony that they didn't think that the unsalable percentage would be as high as it was?

A. State that once more, if you will, please.

Q. Well, did the dealers and growers feel that—or understand at that time, in July of '52, that the—was it their feeling that the unsalable percentage would not be nearly as high as it turned out to be?

A. I would qualify my answer again by stating that I was not—not at the Control Board meeting in July, 1952; however, it is my—it is my recollection of the information that I received that they did not assume—the dealers and growers did not assume that the percentage—surplus percentage would be as high as it was recommended or finally as designated by the Secretary of Agriculture.

Q. Well, did they believe that it would be, say, ten per cent less than it actually turned out to be?

A. I don't think that they figured that it would



(Testimony of C. W. Paulus.)

be any more than twenty-five per cent at the most or even less than that.

Q. What would you say that the general market condition was in 1952?

A. May I refer to a little memorandum that I obtained in [58] my office yesterday?

Q. Well, I would prefer it if you would just answer it on your recollection, or——(interrupted).

A. I think I can hit it pretty well. The 1952 market did not open up until in February, on 1952 crop hops—this is on a forward contracting basis, and on seeded hops, which includes fuggles and clusters—these late clusters, such as were grown on McLaughlin—or Eola Farm, was around fifty-two to fifty-five cents, and seedless clusters from fifty-five to sixty cents. In March, on fuggle hops, there was considerable contract buying at fifty-two cents, and on seeded clusters, at about the same figure, from fifty to fifty-two cents; with seedless up to fifty-five to sixty cents. In April, it was a nominal market, with offerings of forty-nine to fifty-two cents on seedless—or seeded and fifty-five to sixty on seedless. And May, it was a nominal month. There wasn't too much activity. June, likewise, and the early part of July, toward the end of July and the early part of August, the market on seeded was from forty-nine to fifty-two cents and on seedless up to sixty cents. Then the latter part of August and during September, as I previously testified, the market had recessions and there was a drop from thirteen to fifteen cents in both seeded and seedless.



(Testimony of C. W. Paulus.)

and maintained itself until up into October. In the middle of October, the markets again became more active and rose, and through October-November, the markets went up to forty-five to fifty cents on seeded and fifty-five on seedless, and, finally, in December, rose to fifty to [59] fifty-three, I believe, on seeded and sixty to sixty-three on seedless. That is my recollection.

Q. As a dealer, did you consider the market in 1952 to be fairly unsteady?

A. It had periods, yes, of unsteadiness. This statement advises you.

Q. Did you consider it to be a declining market during that period?

A. There were declining soft spots in it, but at the end of the period, the market strengthened.

Q. But isn't it true that the hop industry generally was suffering from a serious over-production situation?

A. Yes, there was over-production, as manifested by the surplus percentage that was finally set.

Q. In 1953, when the controls went off, a great deal of acreage was withdrawn from hop production, is that not true?

A. It began to be taken out, yes.

Q. And in 1952, most dealers and growers were anticipating that sort of situation, were they not?

A. I think not.

Q. You think they were not? A. No.

Q. Wasn't there discussion at that time that the controls would probably go off? A. No. [60]

(Testimony of C. W. Paulus.)

Q. Wasn't there any feeling that there would have to be a considerable cut-back in production?

A. That may have been considered, but the biggest shock the hop industry had was when the control was voted out.

Q. Then it is your testimony that the dealers and growers, as you knew the situation, didn't think that the control was going off? A. No.

Q. Who voted for the decontrol?

A. The growers.

Q. The dealers didn't participate?

A. (Negative nod.)

Q. But the growers were the ones——(interrupted).

A. The growers were the ones that did it, and you could not tell how that election was going to go. The Secretary of Agriculture controlled the election. By that, I mean, counted the votes.

Q. Yes, but he didn't have——(interrupted).

A. He made the determination.

Q. The growers made the determination?

A. The growers cast the votes and the Secretary of Agriculture made the determination.

Q. The tabulation?

Mr. Watson: That's all I have.

The Court: Any further questions?

Mr. Flynn: That's all, your Honor. [61]

The Court: Very well, sir, you may stand aside. By the way, Mr. Clerk, did you get this man's name?

The Clerk: Would you give me your name?

(Testimony of C. W. Paulus.)

The Witness: C. W. P-a-u-l-u-s.

The Clerk: What is your address?

The Witness: 866 Oak Street, Salem, Oregon.

(Witness excused.)

The Court: You may call your next witness.

Mr. Flynn: Petitioner rests, your Honor.

The Court: Petitioner rests.

(Petitioner rests.)

Mr. Watson: Respondent would like to call Mr. Carl Richardson.

The Court: Very well.

#### CARL RICHARDSON

a witness called by and on behalf of the Respondent, first having been duly sworn, was examined and testified as follows:

The Clerk: State your name, please, and your address?

The Witness: Carl Richardson.

The Clerk: Harold?

The Witness: Carl; 2540 S.E. 47th, Portland.

The Clerk: C-a-r-l?

The Witness: C-a-r-l.

#### Direct Examination

By Mr. Watson: [62]

Q. Mr. Richardson, where do you work?

A. For the U. S. Department of Agriculture.

(Testimony of Carl Richardson.)

Q. And what is the nature of your work?

A. I am in charge of their Grain Market News Branch.

Q. Now, how long have you been in that employ?

A. Since 1948.

Q. And in the years 1950, '51 and '52, were you employed in the same line? A. Yes.

Q. Would you explain a little more in detail what your work entails?

A. Well, the Market News Branch gathers and disseminates market information on agricultural commodities.

The Court: Speak out a little louder, Mr. Witness, so I can hear you, and also to be sure that the Court Reporter is getting your testimony.

A. Do you want me to repeat that, sir?

The Court: You can speak into that microphone there.

A. Shall I repeat that?

Q. Yes, if you would, please.

A. The Market News Branch gathers and disseminates market information on agricultural commodities to the trade in general—growers, dealers and Federal agencies, State and County agencies.

Q. And what is the source of your [63] information?

A. Growers, dealers, as well as for market information—current market information, and we supplement that by statistics on stock, hops and crop estimates, export and import data.

Q. Then it is your function to correlate all o

(Testimony of Carl Richardson.)

his material and put it up in the form of a bulletin for the farmers, is that correct?

A. Yes, we issue what we call a Hop Market Review, monthly, except in the harvesting season, and we put a report out twice a month.

Q. And that Review covers the general market situation and deals with the various factors that would be of interest to the farmers, is that right?

A. That's right.

Q. And this Review also dealt with the hop crop, is that correct? A. Yes.

Q. And at my request, have you had occasion to re-examine your files for the last few years?

A. I have.

Q. And you have looked over your past bulletins, is that correct? A. Yes, in a general way.

Q. And you have refreshed your memory with respect to hop conditions in the past years?

A. That is correct. [64]

The Clerk: Exhibit D for identification.

(Respondent's Exhibit D, Witness Richardson, marked for identification.)

Q. I will show you what purports to be Respondent's Exhibit D and I will ask you to identify, please (exhibit handed)?

A. Yes, I prepared this report.

The Court: I can't hear you, Mr. Witness.

A. I prepared this report.

Q. And what does the Exhibit purport to be?

A. This is the Season Average Price, Oregon

(Testimony of Carl Richardson.)

Hops. It shows the type of sale, and equivalent on vine returns per pound to growers, covering the years 1939 through '55.

(Exhibit handed and examined by Mr. Flynn.)

MR. FLYNN: May it please the Court, Petitioner will object to the introduction of this testimony on the ground and for the reason that the average for the year would have nothing to do whatever with the valuation of the hop crop on a particular date or the fluctuation in market prices; and for the further reason that this states that it is for the Oregon, whereas, the hops which are the subject of this dispute are grown in a limited area, namely, Polk and Marion Counties.

THE COURT: Well, that will only affect its weight and sufficiency. I will overrule the objection and receive it for whatever it may be worth and taking into consideration that that is, I presume, based on the hop industry throughout the United States and not on the [65] hop industry in the Willamette Valley.

Q. Now, that's correct, isn't it, Mr. Richardson?

A. That report is for the whole State of Oregon yes.

THE COURT: Oh, for the State of Oregon?

MR. FLYNN: The entire State.

A. The entire State of Oregon.

THE COURT: The entire State of Oregon; not for one particular location.



(Testimony of Carl Richardson.)

A. Yes, that is correct.

The Court: Very well.

A. It is the weighted price, however.

Q. It is offered for the Court's information and you——(interrupted).

The Court: Very well, for whatever it might be worth, I will receive it in evidence.

(Whereupon, Respondent's Exhibit D for identification, Witness Richardson, received in evidence.)

Q. (By Mr. Watson): Based upon your examination of your bulletins, Mr. Richardson, what would you say was the general hop market condition in the year 1952?

A. Well, in the—the crop year 1951-52, with supplies well above market needs, prices declined quite steadily through the—through most of the '51-'52 crop year. Domestic demand was slow and, however, towards the end of 1952, there was a rally in demand, both domestic-wise and for export. This carried into the '52-'53 crop [66] year, where we had slight price advantage, and then there were—there have been periods of real dull conditions, and then there would be a little flurry, and sometimes the market was just inactive and void of any transactions to determine what the market prices might be. I did note that in late 1952, that there was a little flurry of activity which carried—which carried into early 1953.

The Court: Do you think that was due to the

(Testimony of Carl Richardson.)

cutting down of the salable allotment, or what was the cause of that——(interrupted).

A. That was partly true, and, of course, we had a little better foreign demand. I think our exports sales were a little higher in '52 than they were.

The Court: Very well.

Q. But the general trend from 1950 on was a downward trend, is that not so?

A. Your trend and prices is definitely downward.

Q. Now, you—in your re-examination of your bulletins, did you have occasion to look at the acreage planted to hops in Oregon for the years 1951, 1952 and 1953 and 1954? A. Yes.

Q. And what did that examination show?

A. Well, that shows a—a—from 1950—'52, the decline in acreage was some two thousand acres.

The Court: That is from 1950 to '52?

A. '51 to '52, sir, and from '52 to '53, it was nearly six [67] thousand acres. And further decline in the last couple of years has been rather small but it is still declining.

Mr. Watson: That's all the questions that have.

Mr. Flynn: I have a few questions, if you please

(Testimony of Carl Richardson.)

Cross-Examination

By Mr. Flynn:

Q. I understood you to say that you referred to in your testimony the 1951-1952 crop year. What period do you——(interrupted).

A. That, sir, is from—from September through August, is the crop year.

Q. September of one year to August of the next, is that correct?

A. Yes, through August of the next.

Q. And these statistics of yours are based upon from September to August——(interrupted).

A. Crop year basis, uh-huh.

Q. And from what source do you—first, are hops sold or quoted on any exchange? A. No.

Q. They are not?

A. No public market for——(interrupted).

Q. From what source do you obtain the information regarding the tabulation of the hop?

A. As I stated before from——(interrupted).

Q. Oh, I didn't hear——(interrupted).

A. I beg your pardon?

Q. I didn't hear you before, I'm sorry.

A. From dealers and growers of hops.

Q. Approximately how many growers and dealers report to you, do you know?

A. Well, not exactly, but—varies—of course, the number of dealers declined considerably, too.

Q. Do you judge that by the reason in the re-

(Testimony of Carl Richardson.)

duction of the number of reports you received, or from some other source?

A. I don't believe I understood that.

Q. Here is what I am trying to get at: I am trying to find out—I seem to be having a little difficulty asking my question, but that is what I want to know—how many dealers or how many growers report to you for the purpose of preparing the——(interrupted).

The Court: Are they numerous?

Q. Are they numerous?

A. Yes, numerous report——(interrupted).

Q. How many are there in Oregon?

A. That particular report there is qualified as a source of the Crop Reporting Service. We reproduced it, the Market News Branch.

Q. Yes, I understand that, but I don't think you have yet answered my question. What proportion of the growers in Oregon [69] report to you? Is this report compulsory?

A. No, it isn't compulsory.

Q. It is not compulsory. Well, then, perhaps you can tell me or estimate to the best of your knowledge, how many of the total hop growers report their sales to you from which you made this analysis for this Market News Report?

A. I told—that particular report that you are referring to is put out by the Crop Reporting Service, the Agricultural Estimate people, and I have reproduced it.

Q. Then getting back to your previous test

(Testimony of Carl Richardson.)

mony, your year runs from September of one year to September of the next, is that correct?

A. September through August.

Q. September through August. Then how would your report be—let us say, a sale of 1952 hops made as of August, 1952, would that be reported in the 1951-52 year, or would it be reported in the 1952-53 year?

A. In August, that would be reported in the 1951-52 year.

Q. It would? A. In August of 1952.

Q. Yes.

A. It runs from September 1 through August.

Q. Well, then this report—this annual average value that you have, does not really include the 1952 crop in the 1952-53 or '52 year or the 1953 crop in the '53 year, you would have—it [70] would seem to me that you would have material overlapping, is that correct? A. No.

Q. You mean the hops are not sold on contract prior to August of any year?

A. No, I wouldn't say that.

Q. Well, you just said that it wouldn't overlap, and you previously told me that the—a sale in let's say July or August of this year's crop would—(interrupted). A. Of what year's crop?

Q. Well, we can use this year, '51-52, it doesn't matter?

A. Okay; okay—all right. A sale made in August of this year would be included in the 1955-56 crop year.



(Testimony of Carl Richardson.)

Q. Made in August, because it runs from what—August 31st—from August to September?

A. It runs from September 1 through August 31st, a crop year, on hops.

Q. That is what I am trying to get at. The sales that were reported to you, then, are analyzed and dropped into the proper year, is that right?

A. Yes.

Q. Proper crop year? A. Sure.

Q. I understood you to say a while back, when I asked you if the hops sold under contract prior to August 31st would be reported [71] in the '51-52 year instead of the '52-53?

A. Now you have got me confused.

Q. Well, we're even.

A. Well, here is the crop year, it runs from September 1 through August 31st.

Q. Yes.

A. I don't know what more you want to know.

Q. Well, here's what I am trying to——(interrupted).

Mr. Watson: Your Honor, I don't see the purpose for this line of questioning. The Exhibit is merely presented to show what the general market prices were in these years. It has no more import than that.

The Court: I can't see that's material, Mr. Flynn, what crop year—what year you put your particular crop.

Mr. Flynn: I am attempting to show here—my next question was going to be directed towards the



(Testimony of Carl Richardson.)

number of hop ranches in Oregon, if he knew, because that statement, as I understand it, would include hops grown east of the mountains as well as hops grown in the valley, and they are not the same kind, are they?

A. No, there's different varieties of hops raised in Oregon. They are not all one kind.

Mr. Flynn: That's all.

Mr. Watson: That's all, Mr. Richardson.

(Witness excused.) [72]

Mr. Watson: If the Court will indulge us, we have one more witness, but it shouldn't take very long.

The Court: Well, let's hasten along, please.

Mr. Watson: We call Mr. Eaton, please.

### ROBERT H. EATON

witness called by and on behalf of the Respondent, first having been duly sworn, was examined and testified as follows:

The Clerk: State your name and address for the record, please?

The Witness: Robert H. Eaton, 1218 S.W. Washington, Portland, Oregon.

### Direct Examination

by Mr. Watson:

Q. Mr. Eaton, what is the nature of your employment?

A. I am Officer in Charge of the Northwest Marketing Field Office of the Fruit and Vegetable Division, USDA.

(Testimony of Robert H. Eaton.)

Q. For how long have you been so employed?

A. I have been employed as Officer in Charge since August, '53, and as assistant in charge since October of 1948.

Q. In connection with this work, did you perform some function in carrying out the hop-marketing control agreement?

A. That's correct, the Control Board is the industry committee that administers the marketing agreement, and the actions they take are in the nature of recommendations and the Secretary of Agriculture considers those recommendations along with other [73] pertinent data and issues the final regulations pursuant to the Marketing Agreement Act, under which the authority for it falls.

Q. Well, in the years 1951 and 1952, the Hop Marketing Agreement was in effect, is that correct?

A. That's correct.

Q. And during those years, you were a representative for the Department of Agriculture in carrying out that agreement?

A. That is correct.

Q. And did you associate with these Hop Control Boards?      A. I did.

Q. And I think maybe you have testified what the Hop Control Boards are, but would you explain that a little further—just exactly what the Hop Control Board was?

A. Well, very briefly, under authority provided in the Agriculture Marketing Agreement Act of 1937, the hop industry put into effect an agreement

(Testimony of Robert H. Eaton.)

which gave them the authority to attempt to bring their supplies in balance with demand, and by doing that, they—the Administrative Board met each late summer and considered prospective demand and established what is known—what was known as a salable quantity, which they felt the trade could consume and reflect a fair return to the grower.

Q. These Boards were made up of growers, is that correct?

A. Growers and dealers——(interrupted).

Q. Growers and dealers——(interrupted).

A. ——and brewers. [74]

Q. And brewers? A. That's right.

Q. And then the industry itself really controls the production, is that——(interrupted).

A. It was entirely an industry program, financed by the industry and administered by the industry under the supervision of the Department of Agriculture to assure compliance with the Act under which they operated.

Q. And when did this Board normally meet to make their decision about the amount of production? A. Normally, in late summer.

Q. Late summer? A. Yes.

Q. In the year 1952, what was the date of the meeting?

A. The Board met and considered the subject of salable quantity on July 17th, 1952. They made their recommendations to the Secretary of Agriculture, who considered them along with other pertinent data provided in the order and issued a

(Testimony of Robert H. Eaton.)

notice of salable quantity on August 7th, and gave anybody opportunity to file objections or arguments to that notice, and on August 28th, as published in the Federal Register, he issued the final salable quantity of thirty-nine million two hundred thousand pounds.

Q. Well, then, if I understand your testimony correctly, this decision was made by the Hop Control Board on the 17th of July, and the decision was passed on to the Secretary of Agriculture [75] for his adoption at that time, is that right?

A. The Committee made their recommendations, that is correct. The Secretary is the one that makes the decision.

Q. In your experience working with this Board, is it true that the Secretary substantially adopts the recommendations from the Control Board?

A. He is required under the terms of the order to give consideration to the Board's recommendation as well as to other statistical information available to him. It is true that considerable weight is given to the Board's recommendations, since they have been elected to represent the industry. He does sometimes follow it, and sometimes deviates from it slightly.

Q. Then, the Board takes into consideration the amount of the estimated crop as of this July date and the amount of the estimated crop that can be sold, and then they reach a percentage of salable and non-salable crop, is that correct?

A. No, the Board merely estimates the demand

(Testimony of Robert H. Eaton.)

for which they feel the brewers can consume, considering the carry-over, and establishes a salable quantity. The surplus percentage is determined by dividing this salable quantity as established by the Board and finally approved by the Secretary, by the crop production as it is finally turned out to be.

Q. But for a grower or a dealer—he can reasonably estimate what the salable percentage will be once the Hop Control Board makes its decision, isn't that correct? [76]

A. Once the Board has made their recommendations and assuming the Secretary has approved it, anyone—dealer, grower or anyone, can take the current estimates of crop production and make the calculation himself.

Q. Then it is possible, and it is the usual practice to consider that the salable percentage has been fixed as of the date the Hop Control Board makes its decision, isn't that so?

A. Not fixed, no. It's dependent upon what the crop turns out to be, which may vary some either way, depending upon how the crop finally turns out. But, taking within reasonable bounds, I think you can say yes.

Q. But in the years here in question, 1951, 1952, there was no substantial deviation from the figure that was set up by the Control Board, was there?

A. The salable quantity as recommended was adopted, that is correct. The surplus percentage was not finally established, of course, until every last bale was weighed, by the Board, until every last un-



(Testimony of Robert H. Eaton.)

harvested acreage was estimated by the Board and figures established. However, beginning with July 1 each year, the Crop Reporting Service makes an estimate of total crop production, and they make that monthly, and using that monthly crop production and the Board's recommendation, assuming that it—based on the assumption that the Secretary approve it, you could come up with an estimate of what the surplus might be. But again, there—that estimate on July 1 is released on July 10th, so from the period— [77] the figure you are using in making this rough calculation is a July 1 figure, and the August 1 figure does not become available until August 10th.

Q. Well, as a matter of fact, in 1952, the unsalable percentage didn't change from July 17th until the end of the crop season, did it, to any substantial degree?

A. Well, I will have to check my figures—I don't believe it varied. As I said earlier, it was within reasonable—if I make a reasonable estimate, I think it varied maybe a couple of per cent from the beginning to the end.

Q. Not more than two or three per cent?

A. As I recall, it was in that vicinity, yes.

Mr. Watson: That's all I have.

Mr. Flynn: I have a few questions I would like to ask you.



(Testimony of Robert H. Eaton.)

Cross-Examination

By Mr. Flynn:

Q. Does the Board set the production of the hops—the quantity to be produced?

A. No, that's——(interrupted)

Q. It does not. The Board does say, if I understand your testimony correctly, that you can sell a specific quantity of what is grown, is that correct?

A. It established a total salable quantity, that is correct.

Q. Now, I understood you to say that you—I understood [78] you to say that a notice was furnished to the growers early—what happened if they sold hops—sold their hops based upon that notice, and it later turned out that the percentage was reduced?

A. The salable or surplus percentage?

Q. Salable, we are talking about?

A. The salable quantity is, and its effect on what a grower could sell, took precedence over contract, so——(interrupted)

Q. By that, then, this notice that you furnished them in August was not final, was it?

A. No, as I testified earlier, the final—when we are speaking in terms of the percentage, the final depends upon the final production.

Q. And that final production is determined when? In the year 1952, since that is the year we are talking about?

(Testimony of Robert H. Eaton.)

A. May I check my notes here?

Q. Certainly.

A. (After checking notes): Well, it was approximately December 15th that I can——(interrupted)

Q. I have December 20th.

A. That is—I don't find the notice that was sent out right now, although I could furnish it——(interrupted)

Q. Now, there is just one other question, I think. What happened in those instances where the crop—you have testified that you obtained estimates of the total crops—of the total crop to be produced, also of the total hops that could be used or purchased [79] by the brewer. What happened if a material portion or any portion of the crop that you estimated to be produced turned out to be of poor quality?

A. The only limitation——(interrupted)

Q. Isn't it possible——(interrupted)

A. ——on quality was leaf and stem content.

Q. Isn't it true that where a part of a crop was of poor quality, a grower could sell all of his hops by just buying certificates, one having good quality hops? Let's say that we——(interrupted)

A. That was true in the '51-'52 marketing season. The order was amended, effective for the '52-'53 crop, limiting the grower's salable quantity to the quantity he harvested within the salable quantity.

Q. All right, but wouldn't it also be true there that if the hops were of poor quality, he could sell

(Testimony of Robert H. Eaton.)

—and he had harvested them, he could sell those certificates to someone—some neighboring farm who had good quality hops?

A. If he harvested them?

Q. Yes. A. Yes.

Q. Isn't that true? A. Yes.

Mr. Flynn: I think that's all.

Mr. Watson: That's all.

The Court: Very well, you may stand aside, sir. [80]

Mr. Watson: That's all, Mr. Eaton, thanks very much.

The Witness: Thank you, sir.

(Witness excused.)

The Court: No further testimony?

Mr. Watson: No further testimony.

The Court: No further testimony?

Mr. Flynn: No further testimony, your Honor.

(Respondent rests.)

The Court: Very well, gentlemen, what is your pleasure in regard to time for filing briefs?

Mr. Flynn: May we have forty-five days to file petitioner's brief, your Honor?

The Court: Very well, what day will that fall on?

The Clerk: June 18th.

The Court: Petitioner's original brief to be filed on or before June 18th; Respondent, thirty days from that, will that be enough?

Mr. Watson: Yes, that will be enough.

The Clerk: July 18th.

The Court: Respondent's answer brief to be filed on or before July 18th. Will twenty days be enough on the reply?

Mr. Flynn: Yes, your Honor.

The Court: And the Petitioner is given until August——(interrupted)

The Clerk: August 7, your Honor. [81]

The Court: ——7th to file his reply brief.

There is nothing further in connection with the case, gentlemen?

Mr. Watson: No, your Honor.

Mr. Flynn: No, your Honor.

The Court: We will be recessed until 10:00 o'clock Monday morning.

(Whereupon, at 5:15 o'clock p.m., the hearing in the above-entitled petition was closed.)

Filed May 29, 1956, T.C.U.S.

## RESPONDENT'S EXHIBIT B

United States Department of Agriculture  
 Agricultural Marketing Service  
 Grain Division  
 345 U. S. Court House  
 Portland 5, Oregon

May 3, 1956.

Oregon Hops: Season Average Price,<sup>1</sup> Type of Sale and Equivalent on Vine Returns Per Pound to Growers, 1939-1955:

Crop Year	Open Market	Contract	All	Equiv. on Vine
1939.....			.25	.15
1940.....			.26	.15
1941.....			.30	.16
1942.....	.82	.37	.46	.28
1943.....	.65	.61	.62	.42
1944.....	.66	.66	.66	.45
1945.....	.64	.64	.64	.43
1946.....	.62	.62	.62	.40
1947.....	.54	.70	.67	.42
1948.....	.37	.55	.49	.26
1949.....	.54	.52	.53	.35
1950.....	.65	.59	.59	.38
1951.....	.57	.65	.65	.43
1952.....	.34	.63	.61	.38
1953.....	.35	.47	.46	.24
1954.....	.22	.47	.44	.22
1955.....			.40	

Note: Weighted average contract and open market sales.

Source: Agricultural Estimates, USDA, AMS.

CARL R. RICHARDSON,  
 Market News Br.

Admitted in evidence May 4, 1956.

[Title of Tax Court and Cause.]

Filed October 29, 1956

## MEMORANDUM FINDINGS OF FACT AND OPINION

This proceeding involves income tax deficiency for the taxable years 1951 and 1952 in the amount of \$2,806.69 and \$13,060.19, respectively.

The sole contested issue is the fair market value of a certain growing hop crop on July 31, 1952, on which date the decedent acquired the crop, among other assets, in exchange for capital stock of Eola Hop Farms, Inc., as a liquidating dividend.

### Findings of Fact

The stipulated facts are found accordingly.

The growing hop crop here in question was planted on the Eola Hop Farms located in Marion County, Oregon. This farm consisted of a total of approximately 165 acres, of which 149.5 acres were planted to hops.

Prior to 1950, the farm had been owned and operated by Grace N. Williams (hereinafter referred to as the decedent) and a co-partner, under the partnership name of Williams and Thacker. In 1950, the interest of the co-partner was purchased by the decedent, and thereafter until March 1, 1951, the decedent operated the business as a sole proprietorship. On March 1, 1951, all the assets and liabilities



of the sole proprietorship were transferred by decedent to Eola Hop Farms, Inc., a corporation, in exchange for all of the capital stock of the corporation. From March 1, 1951, to July 31, 1952, the farming business was carried on by the corporation. Thereafter, farming operations were again carried on by decedent as a sole proprietorship. In 1953, the hop vines were pulled up and the growing of hops abandoned.

The corporation reported a loss of \$8,597.33 for its operations for the period from March 1, 1951, to December 31, 1951. For the seven months ending July 31, 1952, a loss was reported by the corporation in the amount of \$339.12; however, in the computation of such loss the expenses incurred by the corporation in planting hops in March and caring for the 1952 crop up to July 31, 1952, were not deducted but were carried on the balance sheet of the corporation as an asset in the amount of \$44,165.66. This sum was carried over and utilized by the decedent in computing the loss attributable to the 1952 hop crop. In addition to the above-referred-to expenses incurred by the corporation the decedent, operating as a sole proprietor after July 31, 1952, incurred further harvesting and marketing expenses attributable to the hop crop in the amount of \$42,015.89.

The receipts from the sale of hops for the years 1950, 1951, and 1952, and the expenses incurred attributable to such receipts are as follows:

Year	Reported Hop Receipts	Reported Expenses
1950 .....	\$108,246.42	\$85,820.81
1951 .....	88,506.31	82,826.96
1952 .....	46,445.72	86,181.55

The total crop production for 1952, in terms of pounds, the salable quantity of the crop, the amounts sold, and the unit price per pound received and the total receipts for the 1952 hops are shown by the following:

1952 Crop Hops

Total crop—per Hop Control Board.....	152,740 pounds
Salable percentage .....	65.7%

Salable allotment .....100,350 pounds

Sales	Bales	Pounds	Price	Amount
Jos. Schlitz Brewing Co.....	246	48,716	52¢	\$25,332.32
Hans Hinrichs Hops Co., Inc. 32		7,643	67¢	5,120.81
Paul Reinemann Co.....	1	228	42¢	95.76
Paul Reinemann Co.....	13	2,399	42¢	1,007.58
Yakima Chief Ranches, Inc..	226	45,697	34¢	15,536.98
	518	104,683		\$47,093.45
Certificate purchase .....		2,399	27¢	647.73
	518	102,284		\$46,445.72

No contracts for the sale of the 1952 hop crop to dealers or users or any other persons had been executed by either the corporation or the decedent as of July 31, 1952.

The net income reported by decedent for the year 1950 was \$36,241.51; for the year 1951, \$30,344.40. In her Federal income tax return for 1952 decedent reported a net farm loss on the operation of the Eola Farms in the amount of \$43,385.90. When this loss was offset against other income received by the

decedent in 1952 the result, as reported on her tax return, was a net loss of \$8,731.03.

The average cost of planting and cultivating hops on lands in the vicinity of the Eola Farms during the year 1952 was from 22 to 25 cents per pound, and the average cost of harvesting and baling was from 20 to 25 cents per pound.

The growing crop of hops distributed to the decedent was not matured on July 31, 1952, and the risk of loss from mildew and other crop diseases was practically nonexistent at that date. The crop matured during the latter part of August and the early part of September, 1952.

The average market price for the type of hops grown on the Eola Farms as of July 31, 1952, was between 49 and 52 cents per pound. In the latter part of August the price range was between 30 and 35 cents per pound. In the middle of October the market became more active and through November ranged from 45 to 50 cents per pound, and during December the price ranged from 50 to 53 cents per pound.

The hop industry has been suffering from serious overproduction since 1950. The market, for the most part of 1952, was relatively inactive. Under the Agriculture Market Agreement Act of 1937, the industry put into effect an agreement providing the industry with authority to bring supplies in balance with demand. The agreement was administered by a Hop Control Board made up of growers, dealers,

brewers, and Government representatives. The Board met in the late summer of each year and made a survey of prospective demand and other factors which might affect market conditions. It determined what they considered to be the salable quantity of crop then planted—a quantity which the trade could consume and which would reflect a fair return to the grower. The Board made a recommendation as to salable quantity, which was transmitted to the Secretary of Agriculture for final decision. The Secretary considered the recommendation of the Board, along with other pertinent data, and issued a final salable quantity. In general, the Board's recommendation as to the salable quantity was adopted by the Secretary without substantial change. In the year 1952, the Board's recommendation did not vary more than one or two per cent from the final decision made by the Secretary of Agriculture.

The over-all salable quantity for the hop industry determined by the Secretary was a percentage of each grower's crop and the growers could not market more than such established percentage. Nevertheless, it was necessary for each grower to harvest all his crop, including the unsalable portion.

The salable percentage of each grower's crop was slightly in excess of 85 per cent in 1950; approximately 74 per cent in 1951, and in 1952 it was 65.7 per cent.

The Hop Control Board met on July 17, 1952 and made its recommendation to the Secretary of

Agriculture as to the salable quantity of the crop for that year.

R. E. Williams, Jr., a son of decedent and executor of her estate, had long been active as a grower and dealer in hops. He was a member of the Hop Control Board and in 1952, participated in its deliberations which resulted in recommending that approximately 36 per cent of the crop be declared nonsalable.

Williams managed the Eola Farms in 1952, and had managed it since 1940. He handled the decedent's hop-growing affairs in 1952 and for a considerable time prior thereto. He also participated in the decision to dissolve the corporation on July 31, 1952.

The fair market value of the growing crop of hops on the Eola Farms property on July 31, 1952, was \$11,500.

### Opinion

LeMire, Judge:

The question presented requires a determination of the fair market value of a growing hop crop on July 31, 1952, on which date the decedent acquired the crop as a liquidating dividend.

The petitioner contends that the fair market value of the growing hop crop was not determinable on the critical date in question because the decedent was not willing to sell the crop at less than the cost of planting and cultivating the crop up to the date



of the transfer, which cost was in the amount of \$44,165.66. This position is premised on the usual definition of the term "fair market value" as the price at which a seller willing to sell at a fair price and a buyer willing to buy at a fair price, both having knowledge of the facts, will trade.

The respondent determined the fair market value of the crop as of July 31 to be the amount of \$4,375.40, which was calculated by deducting from the total farm revenues for the year 1952, the total cost of the operations of the farm for the period August 1 to December 31, 1952.

We do not think the contention advanced by either of the parties furnishes the correct solution to the question in controversy.

The statute requires a valuation of the property at the critical date involved. The determination of value is a factual one. No fixed formula is controlling, but the facts of probative force serve to fix value.

We are here dealing with a special property which we think admits of no accurate determination, and in such cases recognition is given to the rule of reasonableness and common sense.

The record shows that on the critical date the crop was matured to the extent that from then on harvest-time the risk involved from mildew and disease was negligible so that the yield in pounds could be approximately estimated; the range in bid pri



and cost of harvesting the crop in pounds were known.

On July 17, prior to the critical date, the Hop Control Board had made its recommendation to the Secretary of Agriculture as to the percentage of the 1952 crop that would be salable. The decedent's agent, R. E. Williams, Jr., was a member of the Board and was aware of its recommendation, as were hop growers and dealers generally. While the Secretary of Agriculture made the final decision as to the percentage of the hop crop that would be salable, and such decision was made at the end of the year, it was known that it was the general practice of the Secretary to adopt the Hop Control Board's recommendation.

In making our determination each specific factor and such facts as might be reasonably anticipated, as of the valuation date, have been accorded such weight as in our judgment the facts and circumstances require.

We, therefore, have found as an ultimate fact that the fair market value of the growing hop crop in question, as of July 31, 1952, was \$11,500.

Decision will be entered under Rule 50.

Served October 29, 1956.

Entered October 29, 1956.

The Tax Court of the United States

Docket No. 57441

ESTATE OF GRACE N. WILLIAMS, Deceased,  
RALPH E. WILLIAMS, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, filed October 29, 1956, the respondent filed a computation which the petitioner agrees is in accordance with the opinion. Therefore it is

Ordered and Decided: That there are deficiencies in income tax for the taxable years 1951 and 1952 in the respective amounts of \$2,217.79 and \$8,532.14

[Seal]      /s/ C. P. LeMIRE,  
Judge.

Entered December 12, 1956.

Served December 13, 1956.

United States Court of Appeals  
for the Ninth Circuit

Tax Court Docket No. 57441

[Title of Cause.]

PETITION FOR REVIEW OF DECISION OF  
THE TAX COURT OF THE UNITED  
STATES

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Estate of Grace N. Williams, deceased, by  
Ralph E. Williams, Executor, the petitioner in this  
cause hereby files a petition for the Review by the  
United States Court of Appeals for the Ninth Cir-  
cuit of the decision of The Tax Court of the United  
States, entered on December 12, 1956, T. C. Memo.  
1956—239.

I.

Jurisdiction

The petitioner on Review is the duly qualified and  
acting Executor of the Estate of Grace N. Williams,  
deceased August 20, 1954, under letters testamentary  
issued by the Circuit Court of the State of Oregon  
for the County of Multnomah, Department of Pro-  
bate on September 29, 1954. The individual income  
tax returns of Grace N. Williams for the calender  
years 1951 and 1952 were timely filed with the Di-  
rector of Internal Revenue for the District of Ore-  
gon, whose office is located at Portland, Oregon,

within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

## II.

### Nature of Controversy

The controversy involves the proper determination of the petitioner's liability for federal individual income taxes for the calendar years 1951 and 1952.

The decedent was the sole stockholder of Eola Hop Farms, Incorporated, an Oregon corporation engaged in the business of hop farming in Marion County, Oregon. On July 31, 1952, Eola Hop Farms Incorporated, distributed to the decedent as a liquidating dividend all of its assets consisting of 165 acres of land of which 149.5 acres were planted to hops together with the buildings and equipment necessary to operation of the farm.

The sole contested issue before the Tax Court was the fair market value of the crop of hops growing upon the lands distributed to the petitioner by Eola Hop Farms, Incorporated, as of July 31, 1952. The expenses incurred by the corporation during the period from January 1 to July 31, 1952, for the planting, care, and cultivation of the growing crop of hops amounted to \$44,165.66. This sum was carried on the balance sheet of the corporation as an asset (prepaid expense) at the time of distribution to the decedent.

The contention of the petitioner was that the fair market value of the growing crop distributed to the

decendent could be established by a sum in excess of a figure representing the market price bid for hops of the type raised on the Eola Farm as of July 31, 1952, less the estimated costs of harvest and baling multiplied by the estimated yield of hops per acre, and that the value so ascertained was not less than the costs of production of the crop to the date of distribution, i.e., \$44,165.66.

The decendent reported receipts from sales of the 1952 hop crop in the amount of \$46,445.72 and expenses of \$86,181.55. The latter sum included \$44,165.66 claimed by the decendent as the fair market value of the growing crop received in liquidation of the Eola Farms, Inc. The resulting loss was absorbed in part by the decendent's income from other sources and in part by a claim for an operating loss carry-back to income of the year 1951, for which she received a refund of income taxes previously paid.

The respondent, Commissioner of Internal Revenue, determined the fair market value of the growing crop at July 31, 1952, to be \$4,375.40. The respondent's determination was arrived at by deducting from the total farm revenues, the costs of operation of the farm from August 1 to December 31, 1952.

The respondent's determination that the fair market value of the crop distributed to the decendent was \$4,375.40 instead of the sum of \$44,165.66 claimed by the decendent resulted in an increase in

the taxable income of the decedent for the year 1952 of \$39,790.26 and the elimination of the loss carry-back claimed by the decedent against income of the calendar year 1951.

The Tax Court found as an ultimate fact that the fair market value of the growing crop distributed to the decedent as of July 31, 1952, was \$11,500.00

### III.

#### Assignments of Error

The Petitioner assigns as error the following acts and omissions of The Tax Court of the United States:

1. The Tax Court erred in its application of the law relating to the determination of fair market value of the growing crop.

2. The Tax Court erred in finding as an ultimate fact that the fair market value of the growing crop was \$11,500.00 at July 31, 1952.

3. The Tax Court erred in that its decision is not supported by the evidence and is contrary to law.

4. The Tax Court erred in holding and deciding that there was a deficiency in individual income taxes due from the petitioner in the amount of \$2,217.79 for the year 1951 and in the amount of \$8,532.14 for the year 1952.

Wherefore, the petitioner prays that the decision of The Tax Court of the United States be reviewed



by the United States Court of Appeals for the Ninth Circuit.

/s/ **JOHN L. FLYNN**,  
Attorney for Petitioner on  
Review.

**Affidavit**

State of Oregon,  
County of Multnomah—ss.

Being first duly sworn, I depose and say that the Commissioner of Internal Revenue is the respondent in the within-entitled petition and that John Potts Barnes, former Chief Counsel of the Internal Revenue Service, was the attorney of record for the respondent in the within-entitled proceeding; that the said John Potts Barnes has resigned from the Internal Revenue Service; that Herman T. Reiling is presently Acting Chief Counsel of the Internal Revenue Service and is the attorney of record for the Commissioner of Internal Revenue; that the said Herman T. Reiling has an office in the Internal Revenue Building in Washington, D. C.; that between said place and Portland, Oregon, there is regular communication by mail; that on March 5, 1957, I served an original copy of the within Petitioner's Notice by Petitioner of Filing Petition for Review together with a true copy of the Petition for Review and Designation of Record upon the said attorney by depositing the same in the United States Postoffice at Portland, Oregon, en-

closed in a sealed envelope with postage prepaid thereon, addressed to him at the said address.

/s/ JOHN L. FLYNN,  
Attorney for Petitioner.

Subscribed and sworn to before me this 5th day of March, 1957.

[Seal] /s/ MARY E. PEASE,  
Notary Public for Oregon.

My commission expires: Aug. 13, 1959.

Duly verified.

Filed March 7, 1957. T.C.U.S.

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[Title of Tax Court and Cause.]

### CERTIFICATE

I, Howard P. Locke, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 11, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designations of Contents of Record," including joint Exhibit 1-A, attached to stipulation of facts, and respondent's Exhibit B, admitted in evidence, in the case before The Tax Court of the United States docketed at the above number and in which the petitioner in The Tax Court case has filed a petition for review as above numbered and entitled, together with a true copy of the docket

entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 15th day of March, 1957.

[Seal]      /s/ HOWARD P. LOCKE,  
Clerk, The Tax Court of the  
United States.

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[Endorsed]: No. 15503. United States Court of Appeals for the Ninth Circuit. Estate of Grace N. Williams, Deceased; Ralph E. Williams, Executor, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed March 28, 1957.

Docketed April 1, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit  
No. 15503

ESTATE OF GRACE N. WILLIAMS, Deceased;  
RALPH E. WILLIAMS, Executor,  
Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Appellee.

STATEMENT OF POINTS

In his appeal herein, the appellant intends to rely upon the following points:

1. The Tax Court erred in its application of the law relating to the determination of fair market value of the growing crop.

2. The Tax Court erred in finding as an ultimate fact that the fair market value of the growing crop was \$11,500.00 at July 31, 1952.

3. The Tax Court erred in that its decision is not supported by the evidence and is contrary to law.

4. The Tax Court erred in holding and deciding that there was a deficiency in individual income taxes due from the appellant in the amount of \$2,217.79 for the year 1951 and in the amount of \$8,532.14 for the year 1952.

/s/ JOHN L. FLYNN,

Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 2, 1957.